Supreme Court, U.S.
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No. ___

IN THE

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,
Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Illinois courts may, consistent with the Due Process Clause, assert personal jurisdiction over out-of-state corporations that have no offices, agents, or employees in Illinois, to adjudicate claims arising from an industrial accident that occurred at a plant located outside of Illinois, solely on the ground that much of the product of that plant is sold, outside of Illinois, to an Illinois firm, when that contact between the defendants and Illinois is unrelated to the plaintiffs' claims.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioners are Southern Company; Southern Energy, Inc.; SEI State Line, Inc.; State Line Holding Corporation; and State Line Energy, L.L.C. The respondents are Richard T. Alderson, Robert A. Kallok, Cyril Smotrilla, David Arcuri, and Paul Danielson. Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., were also parties in the court below.

Southern Company is a publicly held corporation that does not have any parent corporations. No publicly held company owns 10% or more of Southern Company's stock.

Southern Energy, Inc. is now known as Mirant Corporation. Mirant Corporation is a publicly held corporation that does not have any parent corporations. No publicly held company owns 10% or more of its stock.

SEI State Line, Inc. is now known as Mirant State Line Ventures, Inc. Mirant State Line Ventures, Inc. is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation. As noted above, Mirant Corporation is publicly held.

State Line Holding Corporation is wholly owned by Mirant State Line Ventures, Inc. As noted above, Mirant State Line Ventures, Inc. is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation, which is publicly held.

Petitioner State Line Energy, L.L.C. is 40% owned by State Line Holding Corporation and 60% owned by Mirant State Line Ventures, Inc. As described above, State Line Holding Corporation is wholly owned by Mirant State Line Ventures,

Inc., which in turn is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation, which is publicly held.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE PETITION	10
A. The Decision Below Is In Error	10
B. State and Lower Federal Courts Are Deeply Divided About the Permissible Extent of General Jurisdiction	15
CONCLUSION	25
Appendix A	1a
Appendix B	36a
Appendix C	37a
Appendix D	47a

TABLE OF AUTHORITIES

CASES Page

Anthem Ins. Cos. v. Tenet Healthcare Corp., 730 N.E. 2d 1227 (Ind. 2000) 20, 23

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987)..... 3

Atlanta Auto Auction, Inc. v. G&G Auto Sales, Inc., 512 So. 2d 1334 (Ala. 1987)..... 21

Bearry v. Beech Aircraft Corp., 818 F. 2d 370 (5th Cir. 1987)..... 19,23

Buddensick v. Stateline Hotel, Inc., 972 P. 2d 928 (Utah Ct. App. 1998), cert. denied, 982 P. 2d 88 (Utah 1999), cert. denied, 528 U.S. 928 (1999)..... 21-22, 23

Burger King v. Rudzewicz, 471 U.S. 462 (1985)... 3, 23

Burnham v. Superior Court, 495 U.S. 604 (1990)..... 24

Calder v. Jones, 465 U.S. 783 (1984)..... 2, 3

Colletti v. Crudele, 169 Ill. App. 3d 1068, 523 N.E. 2d 1222 (1988)..... 17

Congoleum Corp. v. DLW Aktiengesellschaft, 729 F. 2d 1240 (9th Cir. 1984) 18

Connelly v. Uniroyal, Inc., 75 Ill. 2d 393, 389 N.E. 2d 155 (1979), cert, denied, 444 U.S. 1060 (1980)..... 17

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)..... 2

Cubbage v. Merchent, 744 F. 2d 665 (9th Cir. 1984), cert. denied, 470 U.S. 1005 (1985)..... 22

Daimler-Benz Aktiengesellschaft v. Olson, 21 S.W. 3d 707 (Tex. Ct. App. 2000), pet. for cert. filed, No. 01-929 (docketed Jan. 3, 2002)..... 5

De Reyes v. Marine Management and Consulting, Ltd., 586 So. 2d 103 (La. 1991)..... 20, 23

TABLE OF AUTHORITIES—Continued

	Page
Ferens v. John Deere Co., 494 U.S. 516 (1990)....	25
Follette v. Clairol, Inc., 829 F. Supp. 840 (W.D. La. 1993).....	24
Glater v. Eli Lilly & Co., 744 F. 2d 213 (1st Cir. 1984).....	18
Glover v. Western Air Lines, Inc., 745 P. 2d 1365 (Alaska 1987).....	14
Gulentz v. Fosdick, 466 A. 2d 1049, 320 Pa. Super. 38 (1983).....	14
Hanson v. Denckla, 357 U.S. 235 (1958).....	3, 15, 23
Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984).....	*passim*
Holt Oil & Gas Corp. v. Harvey, 801 F. 2d 773 (5th Cir. 1986), cert. denied, 481 U.S. 1015 (1987).....	5, 11
Hughes v. A.H. Robins Co., 490 A. 2d 1140 (D.C. 1985).....	18
IDS Life Insurance Co. v. SunAmerica Life Insurance Co., 136 F. 3d 537 (7th Cir. 1998)....	14
Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982).....	3
International Shoe Co. v. Washington, 326 U.S. 310 (1945).....	3, 11, 12
Japax, Inc. v. Sodick Co., 186 Ill. App. 3d 656, 542 N.E. 2d 792 (1989).....	17
Keeton v Hustler Magazine, Inc., 465 U.S. 770 (1984).....	3
Kulko v. Superior Court, 436 U.S. 84 (1978).....	3
McGee v. International Life Ins. Co., 355 U.S. 220 (1957).....	3
Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F. 3d 560 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996).....	5, 11, 19-20, 23

TABLE OF AUTHORITIES—Continued

Page

Michigan National Bank v. Quality Dinette, Inc., 888 F. 2d 462 (6th Cir. 1989) 16, 21
Newco Manufacturing Co., ex parte 481 So. 2d 867 (Ala. 1985) 20-21
Nichols v. G.D. Searle & Co., 991 F. 2d 1195 (4th Cir. 1993) 18, 23-24
Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) ..... *passim*
Phillips Petroleum v. Shutts, 472 U.S. 797 (1985) 25
Provident National Bank v. California Federal Savings & Loan Ass'n, 819 F. 2d 434 (3d Cir. 1987) 16, 21
Ratliff v. Cooper Laboratories, Inc., 444 F. 2d 745 (4th Cir.), cert. denied, 404 U.S. 948 (1971) 18
Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923) 12-13
Rush v. Savchuk, 444 U.S. 320 (1980) 3, 7
Schreiber v. Allis-Chalmers Corp., 611 F. 2d 790 (10th Cir. 1979) 15
Shaffer v. Heitner, 433 U.S 186 (1977) 3
Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950) 3
United Brotherhood of Carpenters and Joiners, ex parte 688 So. 2d 246 (Ala.), cert. denied, 521 U.S. 1118 (1997) 21
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 3, 15

CONSTITUTIONAL PROVISION, STATUTES, AND RULES

United States Constitution:

Fourteenth Amendment ..... *passim*

TABLE OF AUTHORITIES—Continued

	Page
28 U.S.C. 1257(a)	2
28 U.S.C. 1404(a)	25
735 ILCS 5/2-209(a) (West 1998)	6
735 ILCS 5/2-209(b)(4) (West 1998)	7
S. Ct. R. 14.1(g)(i)	7, 9
166 Ill.2d R. 306(a)(3)	7

MISCELLANEOUS

Brilmayer, Lea, et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721 (1988)	16
George, B. Glenn, *In Search of General Jurisdiction*, 64 Tul. L. Rev. 1097 (1990)	15-16
Juenger, Friedrich K., *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141	15
von Mehren, Arthur T. & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121 (1966)	4, 24

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PETITION FOR A WRIT OF CERTIORARI

Southern Company, Southern Energy, Inc., SEI State Line, Inc., State Line Holding Corporation, and State Line Energy, L.L.C., respectfully petition for a writ of certiorari to review the judgment of the Appellate Court of Illinois, First District, in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois (Pet. App. 1a-35a) is reported at 321 Ill. App. 3d 832, 747 N.E.2d 926, 254 Ill. Dec. 514. The opinion of the Circuit Court of Cook County (Pet. App. 37a-46a) is unreported.

JURISDICTION

The judgment of the Appellate Court of Illinois was entered on March 22, 2001. Pet. App. 1a. A timely petition

for discretionary review was denied by the Illinois Supreme Court on October 3, 2001. Pet. App. 36a. On December 20, 2001, Justice Stevens extended the time in which to file a petition for a writ of certiorari to February 18, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

The decision of the Appellate Court rejected petitioners' argument that the Due Process Clause of the Fourteenth Amendment precluded the state courts from exercising personal jurisdiction over them. See Pet. App. 31a-34a. Although that decision contemplates further proceedings in the state courts, the Appellate Court's judgment "'is plainly final on the federal issue and is not subject to further review in the state courts.'" *Calder v. Jones*, 465 U.S. 783, 788 n. 8 (1984), quoting *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 485 (1975). This Court has repeatedly held, in "cases presenting jurisdictional issues in this posture" (*Calder*, 465 U.S. at 788 n.8), that the judgment is final within the meaning of 28 U.S.C. 1257(a). See *Calder*, 465 U.S. at 788 n.8 (citing cases).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT

A. Introduction

This case presents, with exceptional clarity, what is perhaps the single most important unresolved issue in the law of civil procedure. The Illinois courts in this case asserted general personal jurisdiction over petitioners—that is, jurisdiction to adjudicate claims unrelated to petitioners' contacts with Illinois. A state with general jurisdiction over a defendant may adjudicate any cause of action whatever against that defendant, brought by any plaintiff, no matter where in the world that cause of action arose.

Beginning with the decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which reconceptualized the constitutional limits on personal jurisdiction, this Court has addressed the question of *specific* jurisdiction—when a state may assert jurisdiction on the basis of contacts by the defendant that are *related* to the claim against it—more than a dozen times.[1] These decisions have refined and clarified the law governing specific jurisdiction, and they have also greatly expanded the permissible scope of specific jurisdiction: today, it is settled that a state may assert jurisdiction to adjudicate a claim based on only the most limited contacts between the state and the defendant, as long as those contacts are related to the claim. See, *e.g.*, *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-24 (1957); *Keeton v Hustler Magazine, Inc.*, 465 U.S. 770 (1984).

But since *International Shoe*, this Court has decided only two cases dealing with general jurisdiction over corporations, and one of those cases is fifty years old. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). As a result, state and lower federal courts in general jurisdiction cases—lacking guidance from this Court, and confronted with the great expansion in the permissible scope of specific jurisdiction—have moved in sharply divergent directions. Traditionally states have exercised

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[1] In addition to *International Shoe*, itself a specific jurisdiction case, 326 U.S. at 320, see *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Calder v. Jones*, 465 U.S. 783 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982); *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Shaffer v. Heitner*, 433 U.S 186, 213-217 (1977); *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950).

general jurisdiction over firms that are incorporated in the state or that have their principal place of business there.[2] Some courts have determined not to extend general jurisdiction much beyond these traditional bases, reasoning that, in view of the great expansion in specific jurisdiction, there is no need for expansive general jurisdiction.

Other courts—like the court below, whose decision reflects established principles of Illinois law—have done the opposite: they have greatly expanded the boundaries of general jurisdiction, self-consciously paralleling the expansion of specific jurisdiction. Decisions like those of the Illinois courts vastly exceed both the traditional boundaries of the notion of general jurisdiction and, we submit, any reasonable conception of general jurisdiction.

The decision in this case presents this question—the permissible extent of a state's general jurisdiction over corporations—as clearly as that issue is ever likely to be presented. The claim in this case concerns not a multistate transaction with a difficult-to-specify geographical situs, but injuries incurred in an industrial accident that took place at a power generating plant located in Indiana. Many general jurisdiction cases come to this Court with some tincture of specific jurisdiction—some arguable connection between the defendant's contacts with the forum and the plaintiff's claim.[3] But in this case, both courts below explicitly acknowledged that respondents' claim is unrelated to petitioners' alleged contacts with Illinois.

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[2] See, *e.g.*, Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-44 (1966).

[3] For example, in *Helicopteros Nacionales de Colombia v. Hall*, *supra*, the only general jurisdiction case the Court has decided in the last 50 years, Justice Brennan dissented primarily on the ground that the defendant's activities in the forum state were related to the claim. See 466 U.S. at 424-28.

Finally, courts that assert general jurisdiction typically do so by concatenating a large number of contacts and concluding that in combination they are sufficient to establish general jurisdiction.[4] Multi-factor cases of that kind are seldom well suited for this Court's review, because they are unlikely to provide clear guidance for future cases in which a different combination of factors is present. In this case, however, the court below ruled that the Due Process Clause was satisfied for one reason alone: because the bulk of the output of the plant where the accident occurred was sold—in Indiana—to an Illinois firm. The question of the permissible scope of general jurisdiction—a recurring and important question on which this Court's guidance is unquestionably needed—is, therefore, presented in this case starkly and without factual complexity.

B. The Proceedings Below

1. Petitioners are a group of affiliated firms. Petitioner Southern Company, a publicly-owned holding company, is the parent of petitioner Southern Energy, Inc. Southern Company and Southern Energy, Inc., are among the largest producers of electricity in the United States. Petitioners SEI State Line, Inc., and State Line Holding Corp. are owned, through a subsidiary, by Southern Energy, Inc. They in turn own petitioner State Line Energy, L.L.C., an Indiana limited liability company. State Line Energy owns and operates a power plant in Hammond, Indiana. None of the petitioners is incorporated in Illinois; none has a place of business there.[5]

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[4] See, *e.g.*, *Daimler-Benz Aktiengesellschaft v. Olson*, 21 S.W. 3d 707 (Tex. Ct. App. 2000), pet. for cert. filed, No. 01-929 (docketed Jan. 3, 2002); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F. 3d 560, 570-71, 572-73 (2d Cir.), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996); *Holt Oil & Gas Corp. v. Harvey*, 801 F. 2d 773, 779 (5th Cir. 1986), cert. denied, 481 U.S. 1015 (1987).

[5] Southern Company, like Southern Energy, Inc., is a Delaware corporation that has its principal place of business in Georgia. Pet. App. 3a.

In July, 1998, a coal dust explosion occurred at the Hammond power plant. Respondents, who are employees of Indiana contractors who were working at the power plant at the time, sued petitioners and other affiliated firms for injuries arising out of that accident. Pet. App. 2a. Respondents claimed that their injuries were caused by the negligent maintenance of the plant. Pet. App. 2a, 38a. Respondents brought their suit in the Circuit Court of Cook County, Illinois. Pet. App. 37a. Only one of the five respondents is a resident of Illinois. Pet. App. 2a.

2. The defendants filed special appearances and moved to dismiss the complaint on the ground that the Circuit Court of Cook County lacked personal jurisdiction over them. Pet. App. 2a. The circuit court granted the motion as to certain of the defendants but denied the motion as to petitioners.[6] The circuit court first rejected respondents' argument that personal jurisdiction could be based on an Illinois specific jurisdiction statute, 735 ILCS 5/2-209(a) (West 1998). Section 2-209(a) permits Illinois courts to assert personal jurisdiction on the basis of certain specified acts done by a defendant—such as the "making or performance of any contract or promise substantially connected with this State" (735 ILCS 5/2-209 (a)(7))—but only "as to any cause of action arising from the doing of any such acts" (735 ILCS 5/2-209(a), (f)). In invoking this provision, respondents relied

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SEI State Line, Inc., like State Line Holding Corp., is an Indiana corporation that has its principal place of business in Indiana. State Line Energy, L.L.C., also has its principal place of business in Indiana.

Southern Energy, Inc., and its subsidiaries have been spun off from their former parent, Southern Company, since this litigation began. See Parties to the Proceeding and Rule 29.6 Statement, *supra*. This corporate reorganization does not affect the issues presented here.

[6] The circuit court also denied the motion as to defendants Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc. (Pet. App. 40a-41a, 46a), but the appellate court reversed (Pet. App. 26a-27a, 30a-31a, 34a-35a), and those firms are not petitioners here.

on, among other things, the fact that petitioners' purchase of the Hammond power plant involved contact with an Illinois firm and travel to Illinois. But the circuit court ruled that respondents "have failed to establish how the cause of action in this case, i.e. negligent maintenance, arose out of" any of petitioners' alleged contacts with Illinois. Pet. App. 39a-40a.

The circuit court instead held that respondents could obtain personal jurisdiction over petitioners under the Illinois general jurisdiction statute, 735 ILCS 5/2-209(b)(4) (West 1998). That statute allows a court to exercise personal jurisdiction "in any action arising within or without this State against any person who * * * is a natural person or a corporation doing business within this State." The court relied on the fact that State Line Energy was obligated by contract to sell all of the normal output of the Hammond generating plant to Commonwealth Edison, an Illinois firm. See Pet. App. 41a-42a.

The circuit court then explicitly ruled that this exercise of general jurisdiction over petitioners was consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Pet. App. 42a-43a. See S. Ct. R. 14.1(g)(i). The circuit court explained that petitioners "engaged in 'purposeful activity related to the forum that would make the exercise of jurisdiction fair, just or reasonable.'" Pet. App. 43a, quoting *Rush v. Savchuk*, 444 U.S. 320, 329 (1980).

3. The Illinois Appellate Court accepted petitioners' request for interlocutory review. See 166 Ill.2d R. 306(a)(3). The appellate court noted that "this appeal raises significant issues implicating appellants' constitutional rights." Pet. App. 15a. The appellate court then affirmed the circuit court's ruling that Illinois could assert personal jurisdiction over petitioners. Pet. App. 1a-35a.

The appellate court agreed with the circuit court that there was no basis for specific jurisdiction over petitioners. Pet. App. 18a-20a. The appellate court stated: "[P]laintiffs' causes of action do not arise from any of defendants' contracts or transactions in Illinois. * * * [P]laintiffs are asserting premises liability claims that arose in Indiana and do not arise from any of the Illinois contracts or transactions." Pet. App. 18a-19a. The appellate court also acknowledged that "State Line Energy * * * maintains no offices or sales activities in Illinois" (Pet. App. 21a). And the appellate court recognized that State Line Energy "has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois." Pet. App. 21a. The appellate court further acknowledged that, under the contract between State Line Energy and Commonwealth Edison, "Commonwealth Edison takes 'title' to the electricity in Indiana" (Pet. App. 21a) and State Line Energy "does not directly deliver its product into Illinois" (Pet. App. 23a).

The appellate court nonetheless concluded that State Line Energy was subject to general jurisdiction in Illinois—and "may be sued on causes of action both related and unrelated to its Illinois activities" (Pet. App. 21a)—because "State Line Energy committed to sell the Power Plant's electrical output to Commonwealth Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison." Pet. App. 21a. Consequently, the appellate court said, "there exists activity specifically directed toward the Illinois market." Pet. App. 23a. That, the appellate court concluded, was sufficient to establish general jurisdiction.

The appellate court then held that the other petitioners were also subject to general jurisdiction because of their relationship to State Line Energy. Pet. App. 29a-30a. Specifically, the appellate court ruled, "State Line Energy was a 'conduit' through which Southern and Southern Energy did business"

(Pet. App. 30a) and those petitioners "us[ed] State Line Energy as a means for generating revenue through the sale of electricity in a specified market." Pet. App. 30a.

Like the circuit court, the appellate court explicitly rejected petitioners' argument (see Pet. App. 47a-55a) that the assertion of general jurisdiction over petitioners violated the Due Process Clause of the Fourteenth Amendment. Pet. App. 31a-34a; S. Ct. R. 14.1(g)(i). In discussing the constitutional issue, the appellate court reaffirmed that it had no basis to assert specific jurisdiction over petitioners: "[P]laintiffs' premises liability actions do not arise directly out of defendants' contacts with Illinois." Pet. App. 33a. But the appellate court ruled that the Due Process Clause permitted an assertion of general jurisdiction over each of the petitioners:

> Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. Because these defendants have directed their activities toward the Illinois marketplace and have derived economic benefit as a result of those activities, the fact that the sale of electricity to Commonwealth Edison is technically carried out in Indiana is of no consequence.

Pet. App. 32a.

The court reiterated that petitioners, "through State Line Energy, agreed to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years. * * * [T]heir contacts with Illinois cannot be characterized as random, fortuitous, or attenuated." Pet. App. 33a. The appellate court concluded that all of the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a.

The Illinois Supreme Court denied review. Pet. App. 36a.

REASONS FOR GRANTING THE PETITION

The decision of the court below is manifestly incorrect. It is not, however, an aberration. While some courts have hewed to the traditional bases of general jurisdiction over corporations—requiring very extensive contacts, of the kind a firm might have in its principal place of business—many state and lower federal courts have, like the Illinois courts, expanded general jurisdiction unjustifiably. Like the court below, many of those courts have explicitly invoked this Court's numerous specific jurisdiction decisions, simply assuming that the Court's expansion of specific jurisdiction justifies a commensurate expansion of general jurisdiction.

We believe that such an assumption is wrong and that general jurisdiction is properly confined to something closer to the traditional bases. But in any event, just as this Court superintended the development of the law governing specific jurisdiction, the trend toward expansive general jurisdiction—and the inconsistent results that trend has produced in the state and lower federal courts—should not be allowed to continue without this Court's review.

A. The Decision Below Is In Error.

1. The court below ruled that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners.[7] This

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[7] We believe this is the only fair reading of the opinion of the appellate court. In justifying its conclusion that Illinois could assert general jurisdiction over petitioners, the appellate court relied repeatedly on the fact that the bulk of the plant's output was committed to an Illinois firm. See, *e.g.*, Pet. App. 21a, 23a, 25a, 26a, 32a, 33a, 34a.

While the appellate court did occasionally mention other facts in its discussion of the general jurisdiction and due process issues, the court gave no indication whatever that it would have reached a different conclusion in the absence of any of these facts. Notably, the opinion

Court has never held, or even suggested, that the Due Process Clause permits general jurisdiction to be asserted on a basis like that.

The benchmark for determining the constitutionality of an assertion of general personal jurisdiction is *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the only decision since *International Shoe* in which this Court has upheld the exercise of general jurisdiction over a corporation. A state may assert general personal jurisdiction only if the defendant's contacts with the state "constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416 (1984).

In *Perkins*, the defendant was incorporated in the Philippine Islands and had gold and silver mines there, but when the Japanese occupation of the Philippines during World War II "completely halted" the defendant's mining operations (342 U.S. at 447), the president of the corporation, who was also the general manager and principal stockholder, returned to his home in Ohio. There the president kept the firm's files, carried on correspondence, paid salaries, used Ohio bank accounts to conduct the firm's financial dealings, held directors' meetings, disbursed funds, and "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines" (*id.* at 448). In short, as this Court subsequently explained, "Ohio was the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n. 11 (1984). In these circumstances, the Court held that Ohio

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contains no qualifying language to the effect that the sales to Commonwealth Edison are not to be considered in isolation but must be aggregated with other contacts between petitioners and Illinois in order to establish general jurisdiction. Language of that kind is common in other general jurisdiction cases. See, *e.g.*, *Metropolitan Life Ins. Co.*, 84 F. 3d at 570-71; *Holt Oil & Gas Corp. v. Harvey*, 801 F. 2d at 779.

could assert jurisdiction over the defendant corporation to adjudicate a claim unrelated to the firm's activities in Ohio. See 342 U.S. at 448.

Petitioners, by contrast, conducted no business from Illinois and have no place of business of any kind in Illinois—no branch offices, no sales representatives, no bank accounts, no agents, no employees. Neither of the courts below suggested that Illinois was in any sense the principal place of business of any of the petitioners. No one can plausibly suggest that petitioners' contacts with Illinois resemble those present in *Perkins*.

2. The decision of the Illinois Appellate Court is also irreconcilable with *Helicopteros Nacionales de Colombia v. Hall, supra,* the only other case since *International Shoe* in which this Court has ruled on a claim of general jurisdiction over a corporation. In *Helicopteros*, the defendant, a Colombian corporation that provided helicopter transportation for oil and construction companies in South America, purchased 80% of its helicopter fleet from Bell Helicopter Company in Texas. The defendant also sent prospective pilots to Texas for training and sent management and maintenance personnel to visit Bell Helicopter in Texas for technical consultation. The defendant's chief executive flew to Texas to negotiate a contract related to the claim in the case. 466 U.S. at 411.

The Court in *Helicopteros*, citing *Perkins*, concluded that Texas courts could not assert general jurisdiction over the defendant. See 466 U.S. at 416. *Helicopteros* also relied extensively on *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), a pre-*International Shoe* case in which the Court held that New York could not assert personal jurisdiction over an Oklahoma firm, even though that firm purchased in New York a "large part of the merchandise to be sold at its [Oklahoma] store" (260 U.S. at 518).

The contacts between petitioners and Illinois are, if anything, less significant than the contacts found to be inadequate to sustain general jurisdiction in *Helicopteros* and *Rosenberg*. In both of those cases, officers of the defendant corporations systematically visited the forum state for business-related reasons; there are no comparable personal contacts between petitioners' officers and Illinois. In *Helicopteros* and *Rosenberg*, the defendants made substantial purchases within the boundaries of the forum state. Here, the sale of electricity took place outside of Illinois: Commonwealth Edison received the electricity from the Hammond plant through equipment it owned in Indiana and transmitted the electricity from Indiana to destinations of its own choosing, including destinations outside of Illinois. See Pet. App. 11a.

3. The appellate court's assertion of general jurisdiction over Southern Company and Southern Energy, Inc., is particularly egregious—although, as we explain below, it reflects an approach that a number of other courts have adopted.[8] Southern and Southern Energy are among the largest producers of electric power in the United States. In 1998, the year the accident occurred, Southern Company had operating revenues of approximately $11.4 billion.[9] The

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[8] The appellate court ruled that State Line Energy's contacts with Illinois should be attributed to Southern Company and Southern Energy on the ground that "State Line Energy was a 'conduit' through which Southern and Southern Energy did business." Pet. App. 30a; citation omitted. Although we believe that ruling was erroneous, we do not ask this Court to review it. Even accepting that Southern Company and Southern Energy should be treated as if they operated the Hammond plant, the notion that Illinois can assert general jurisdiction over those petitioners marks an extraordinarily expansive approach to general jurisdiction.

[9] This information is publicly available in Southern Company's annual report for 1998, which can be found at <http.//www.southerncompany.com/annualreports/ar98/financial.html>.

annual revenue from sales of electricity from the Hammond plant was approximately $25 million (Pet. App. 11a)—less than one-quarter of one percent of Southern Company's revenues.

On the basis of these sales from the Hammond plant, the appellate court held that Southern Company and Southern Energy "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a. The court's explanation was that "their contacts with Illinois cannot be characterized as random, fortuitous, or attenuated." Pet. App. 33a.

As the Seventh Circuit stated in a similar context, "if these relations between [a defendant] and Illinois are sufficient to bring the company within the jurisdiction of the Illinois courts, then virtually every large company is within that jurisdiction." *IDS Life Insurance Co. v. SunAmerica Life Insurance Co.*, 136 F. 3d 537, 540 (7th Cir. 1998). Virtually every large firm will have contacts across the nation, with many states, that "cannot be characterized as random, fortuitous, or attenuated." The import of the appellate court's holding is that any such firm can be sued in any state in which it has such contacts—not just on claims related to those contacts, but on any claim whatever, no matter where it arose.

The court below is not alone in taking this approach. Other courts have acknowledged, even in cases involving firms that are not large, that their approach would make the defendant subject to suit in any state in the Union. See, *e.g.*, *Gulentz v. Fosdick*, 466 A. 2d 1049, 1056, 320 Pa. Super. 38, 52 (1983) (stating that its decision might permit the plaintiff to "select any state of the forty-eight continental United States as the forum state"); see also *Glover v. Western Air Lines, Inc.*, 745 P. 2d 1365, 1369 (Alaska 1987) (upholding general jurisdiction over Avis Rent-A-Car System even though it is not licensed to do business in the forum and has no

agents, employees, property, or bank account in the forum); *Schreiber v. Allis-Chalmers Corp.*, 611 F. 2d 790, 793-94 (10th Cir. 1979).

As this Court has said, on more than one occasion, "'it is a mistake to assume that th[e] trend'" toward more expansive specific jurisdiction "'heralds the eventual demise of all restrictions on the personal jurisdiction of state courts.'" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980), quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). The Court should not permit state and lower federal courts simply to drift, unguided, into continually expanding conceptions of the proper scope of general jurisdiction. If the jurisdictional regime in the United States is to change so dramatically—to allow, in practical terms, general jurisdiction in all 50 states for firms accounting for a large portion of the economy—that change, which directly and immediately implicates "the principles of interstate federalism embodied in the Constitution" (*World-Wide Volkswagen*, 444 U.S. at 293), should occur only because this Court has so decided.

B. State and Lower Federal Courts Are Deeply Divided About the Permissible Extent of General Jurisdiction.

Among state and lower federal courts there is sharp disagreement, along several dimensions, on the question of how to define the Due Process Clause limits on general personal jurisdiction. Commentators repeatedly note this inconsistency and attribute it to the lack of guidance from this Court.[10]

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[10] See, *e.g.*, Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141, 156 ("Fifty-six years after *International Shoe* was decided, we still do not know when states may assert dispute-blind [i.e. general] jurisdiction over nonresident corporations."); B. Glenn George, *In Search of General Jurisdiction*, 64 Tul. L. Rev. 1097, 1098 (1990) ("Courts * * * have been frustrated in attempts to apply general jurisdiction theory by the lack of guidance from the Supreme

This uncertainty among state and lower federal courts has several sources. Not only has this Court decided only two general jurisdiction cases, *Perkins* and *Helicopteros*, but both of those cases involved firms incorporated abroad. The Court has, therefore, never addressed general jurisdiction in a domestic interstate context—the context in which most cases arise. In addition, the only standard the Court has specified for determining the limits of general jurisdiction is the requirement that contacts between the defendant and the forum be "'continuous and systematic'" (*Helicopteros*, 466 U.S. at 415, quoting *Perkins*, 342 U.S. at 438). That phrase potentially covers an enormous range of cases. It might be limited—properly, in our view—to the functional equivalent of a principal place of business, as in *Perkins*. But that phrase might also be applied to a course of dealing such as "at least one sale * * * every month" in the forum, totaling only 3% of the defendant's total sales (*Michigan National Bank v. Quality Dinette, Inc.*, 888 F. 2d 462, 466 (6th Cir. 1989)), or even to the regular use of a bank account in the forum state (see *Provident National Bank v. California Federal Savings & Loan Ass'n*, 819 F. 2d 434 (3d Cir. 1987)).

Of direct relevance to this case, there is disagreement among state and lower federal courts about when sales activity connected to the forum state can justify general jurisdiction; about when a plant located outside of the forum

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Court."); *id.* at 1111 ("The Court's failure to deal more concretely with the general jurisdiction problem has led to confusion in lower court decisions. * * * Indeed, it is remarkable how far some courts have extended their jurisdiction over foreign corporations to litigate claims arising in another forum."); Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 724 (1988) ("[T]he only two Supreme Court cases addressing the issue of general jurisdiction since 1952 * * * provide some guidance, [but] the exact status and boundaries of general jurisdiction remain uncertain. Lower courts, unable to agree on the criteria establishing an adequate basis for general jurisdiction, often reach discordant results.").

but near its border can subject the operator of the plant to general jurisdiction; and, most fundamentally, about whether the great expansion in specific jurisdiction since *International Shoe* justifies a commensurate expansion of general jurisdiction or instead means just the opposite—that with the expansion of specific jurisdiction, an expansive view of general jurisdiction is unwarranted.

1. The decision below—which reflects settled Illinois law[11]—held that even when a defendant has no physical presence whatever in a state, sales to a firm incorporated in that state can establish general jurisdiction. This position is extreme but not isolated; other courts have taken a similar view. Some courts, however, while asserting general jurisdiction, have determined—in contrast to the court below—that an element of physical presence in the forum, such as a branch office, an agent, an employee, or another representative, is necessary to establish general jurisdiction. These courts would not have reached the same result in this case that the Illinois courts did.

Further, some courts directly contradict the decision below, and hold that general jurisdiction is unwarranted even when there are substantial sales in the forum state. Finally, a number of courts have ruled that even substantial sales accompanied by a physical presence by the defendant are insufficient to permit the assertion of general jurisdiction. These courts would confine general jurisdiction more closely

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[11] See, *e.g.*, *Japax, Inc. v. Sodick Co.*, 186 Ill. App. 3d 656, 663-64, 542 N.E. 2d 792, 796-97 (1989) (asserting general jurisdiction over a Japanese manufacturer whose products regularly entered Illinois, even though manufacturer sold only to intermediaries in Japan); *Colletti v. Crudele*, 169 Ill. App. 3d 1068, 1079-81, 523 N.E. 2d 1222, 1229-30 (1988) (asserting general jurisdiction over a Florida trucking firm that made, on average, a dozen trips annually to Illinois for local consignees); *Connelly v. Uniroyal, Inc.*, 75 Ill. 2d 393, 406, 389 N.E. 2d 155, 161 (1979), cert, denied, 444 U.S. 1060 (1980) (asserting general jurisdiction over Belgian tire manufacturer on ground that its product regularly entered Illinois).

to its traditional bases—the place of incorporation and the principal place of business. They are at the furthest remove from the Illinois courts.

a. In *Nichols v. G.D. Searle & Co.*, 991 F. 2d 1195 (4th Cir. 1993), the defendant had between 17 and 21 employees in the forum state, supervised by a district manager who was also in the state; it held meetings in the forum, made purchases in the forum, entered into a contract with a forum state firm, and made between $9 million and $13 million of sales in the forum. The Fourth Circuit held that these contacts were insufficient to justify the assertion of general jurisdiction. 991 F. 2d at 1198-1200. This decision obviously cannot be reconciled with the decision below in this case: in *Nichols*, not only were substantial sales made in the forum, but—unlike here—the defendant had a substantial and continuous physical presence there.

Similarly, in *Hughes v. A.H. Robins Co.*, 490 A. 2d 1140 (D.C. 1985), the defendant sent sales representatives into the District of Columbia, maintained an office there for limited purposes, and made over $3 million worth of sales in the District; the court ruled that these contacts were insufficient to establish general jurisdiction. See *id.* at 1142-43, 1150-51. In *Ratliff v. Cooper Laboratories, Inc.*, 444 F. 2d 745 (4th Cir.), cert. denied, 404 U.S. 948 (1971), the defendant had obtained a license to do business in the forum state, appointed an agent to receive service of process, and maintained five agents in the state to promote its products and occasionally take orders (*id.* at 746); the court ruled that there was no general jurisdiction. See *id.* at 748. See also *Glater v. Eli Lilly & Co.*, 744 F. 2d 213 (1st Cir. 1984); *Congoleum Corp. v. DLW Aktiengesellschaft*, 729 F. 2d 1240, 1242 (9th Cir. 1984) ("[N]o court has ever held that the maintenance of even a substantial sales force within the state is a sufficient contact to assert jurisdiction in an unrelated cause of action.").

b. Other courts, when faced with facts essentially similar to those in this case—in which there were substantial sales but no physical presence in the forum—have held, in direct contradiction to the Illinois courts, that the Due Process Clause does not permit the exercise of general jurisdiction. In *Bearry v. Beech Aircraft Corp.*, 818 F. 2d 370 (5th Cir. 1987), for example, the Fifth Circuit reversed the district court's assertion of general jurisdiction even though the defendant provided (in the court of appeals' own words) an "enormous stream of commerce" into the forum (*id.* at 375), totaling $250 million in sales and $195 million in purchases. The defendant also occasionally sent representatives into the state in connection with its sales and purchases. *Id.* at 373.

In sharp contrast to the court below, the Fifth Circuit explicitly rebuked the district court for not attaching weight to the fact that the defendant had completed the transactions in its home state, not in the forum. See 818 F. 2d at 375 (emphasis omitted) ("The district court [mistakenly] characterized the sales made by [the defendant] to Texas dealers as occurring in Texas, even though all such sales were negotiated in and completed in Kansas").

c. Even some courts that have allowed a relatively expansive scope to general jurisdiction have been careful to draw a line short of the extreme position of the Illinois courts. For example, in *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F. 3d 560, 570-71 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996), the court upheld the assertion of general jurisdiction, but only after carefully noting all of the various contacts: not just relationships with firms in the forum state, but sales to addresses in the forum state (a contact that does not exist here, because petitioners sold and delivered electricity only outside of Illinois); an office that the defendant had maintained in the forum state, staffed by an employee (another contact not present here); and numerous trips by employees of the defendant to the forum state on matters related to the defendant's business.

The Second Circuit, in *Metropolitan Life*, suggested that these contacts had to be taken together to establish general jurisdiction. See 84 F. 3d at 570-71. And even then, the court ruled that, although the defendant had the necessary contacts to sustain general jurisdiction, the assertion of general jurisdiction would be unfair and would accordingly violate due process. *Id.* at 573-75. *Metropolitan Life*, too, must be regarded as inconsistent with the rulings of the Illinois courts—although it is also in disagreement with the decisions of circuits that adopt a narrower view of general jurisdiction. See also *Anthem Ins. Cos. v. Tenet Healthcare Corp.*, 730 N.E. 2d 1227, 1238-40 (Ind. 2000) (frequent business trips to Indiana, and "contract[s] with several Indiana businesses" justify assertion of general jurisdiction).

The Supreme Court of Louisiana has also emphasized the importance of physical presence in the forum, asserting general jurisdiction over a foreign corporation but carefully noting that its basis for doing so was that the corporation had "installed a major semi-global corporate office in this state"—one of only four such offices that it had throughout the world. *De Reyes v. Marine Management and Consulting, Ltd.*, 586 So. 2d 103, 113 (La. 1991); see *id.* at 104; *id.* at 108 ("[I]t is evident that the conducting of business regularly out of a corporate office in the forum state is considered as an extremely substantial step toward creating jurisdiction.") In contrast, the Illinois courts in this case brushed aside the fact that none of the petitioners had any office of any kind in Illinois.

d. A number of courts have, however, taken the same approach as the Illinois courts, and upheld the exercise of general jurisdiction just because the defendant made significant sales to customers from the forum state. In *Ex parte Newco Manufacturing Co.*, 481 So. 2d 867 (Ala. 1985), the Alabama Supreme Court asserted general jurisdiction over a firm that had no employees or agents in the state but that engaged in "annual sales in Alabama* * * rang[ing] from

$65,000 to $85,000." *Id.* at 869. The court explained—in language like that of the Illiniois appellate court below—that these contacts were sufficient because they were "deliberate rather than fortuitous" (*id.* at 869). See also *Ex parte United Brotherhood of Carpenters and Joiners*, 688 So. 2d 246, 251-52 (Ala.), cert. denied, 521 U.S. 1118 (1997); *Atlanta Auto Auction, Inc. v. G&G Auto Sales, Inc.*, 512 So. 2d 1334, 1335-36 (Ala. 1987).

The Sixth Circuit held that the Due Process Clause would permit Michigan courts to assert general personal jurisdiction over a firm that had "no real estate, bank accounts or telephone listings in Michigan [and] did not participate in trade shows or other promotional events in Michigan" because the firm made regular sales in Michigan of $625,000 over a two-year period, approximately 3% of the firm's total sales. *Michigan National Bank,* 888 F. 2d at 466. Perhaps even more extreme, in *Provident National Bank v. California Federal Savings & Loan Ass'n*, *supra*, the Third Circuit held that general jurisdiction could be asserted over a firm that had no offices, employees, or agents in the forum state; the basis for general jurisdiction was a bank account that the firm had there. The Third Circuit dismissed the suggestion that the bank account in the forum state was too small a part of the defendant's business, in either percentage or absolute terms, to justify the assertion of general jurisdiction; the court instead declared that the question was whether the forum state activities were "central to the conduct of its business * * * the bread and butter of its daily business." 819 F. 2d at 438. Neither of these decisions can be reconciled with the decisions of the Fourth and Fifth Circuits, which disapproved the assertion of general jurisdiction when contacts were much more substantial.

2. The extent of disagreement can be seen even in cases that, like this one, involved facilities located near a state border. In *Buddensick v. Stateline Hotel, Inc.*, 972 P. 2d 928 (Utah Ct. App. 1998), cert. denied, 982 P. 2d 88 (Utah 1999),

cert. denied, 528 U.S. 928 (1999), the plaintiff slipped and fell in a casino that was located in Nevada adjacent to the Utah border. See 972 P. 2d at 929. The Utah Court of Appeals—invoking a twelve-part test—held that Utah could constitutionally assert general jurisdiction over the casino. See *id.* at 930-31. The Utah court also relied on the notion—derived from specific jurisdiction cases—that "when a foreign corporation specifically targets citizens of another state, the corporation can reasonably be expected to have to defend itself in that forum." *Id.* at 931 (citations omitted).

In *Cubbage v. Merchent*, 744 F. 2d 665 (9th Cir. 1984), cert. denied, 470 U.S. 1005 (1985), however, the court was faced with similar facts and reached the opposite result. In *Cubbage*, a California plaintiff brought a malpractice action, in federal district court in California, against a hospital located in Arizona "in a sparsely populated desert region near the Arizona/California border" in a town that was connected to California by a bridge. See 744 F. 2d at 667. Two doctors who practiced at the hospital were also named as defendants. Over one-quarter of the hospital's patients were California residents, and both the hospital and the doctors had obtained reimbursement from a California state program. *Id.* at 668. The hospital circulated advertising that reached California. *Id.* at 667.

The Ninth Circuit ultimately held that the defendants were subject to specific jurisdiction, but only after it had unequivocally rejected the plaintiff's claim that the district court could exercise general jurisdiction over the defendants. 744 F. 2d at 667-68. The Ninth Circuit explained: "[T]he doctors are not California residents, are not licensed in California, and did not treat [the plaintiff] in California; the hospital is not located, licensed or incorporated in California." *Ibid.* The Hammond power plant, like the hospital in *Cubbage*, is near a state border and does substantial business with forum state entities; but, like the hospital, none of the petitioners is "located, licensed, or incorporated" in the forum state.

3. Finally, there is profound disagreement among the state and lower federal courts on the relationship between general and specific jurisdiction. The court below concluded that petitioners were subject to the court's jurisdiction because they had "purposefully directed their activities toward" Illinois (see, *e.g.*, Pet. App. 32a) and because their contacts were not "random, fortuitous, or attenuated." Pet. App. 33a. These notions are drawn from *specific* jurisdiction cases. See, *e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), quoting *Hanson*, 357 U.S. at 253. Other courts have drawn on specific jurisdiction concepts in the same way. See, *e.g.*, *de Reyes*, 586 So. 2d at 108; *Anthem Ins. Cos.*, 730 N.E. 2d at 1240; *Buddensick*, 982 P. 2d at 931; *Metropolitan Life Ins. Co.*, 84 F. 3d at 572 (suggesting that contacts are sufficient to justify general jurisdiction if they are "more than sporadic and occasional").

This conflation of specific and general jurisdiction is unjustifiable. The Fifth Circuit has recognized as much, expressly disapproving the use of the specific jurisdiction notion of "stream of commerce" in a general jurisdiction case. See *Bearry*, 818 F. 2d at 375. General and specific jurisdiction serve wholly different purposes, and it is simply a misconception—perhaps fostered by this Court's near-exclusive concentration on specific jurisdiction—to suppose that general jurisdiction requires no more than an enhanced form of the contacts that might justify specific jurisdiction.

If anything, the Court's great expansion of the permissible scope of specific jurisdiction is a reason *not* to expand general jurisdiction: there is less need for general jurisdiction when a suit may easily be brought in a state that has a connection to the claim. Again, some lower courts have recognized this point. As the Fourth Circuit explained:

> [B]ecause specific jurisdiction has expanded tremendously, plaintiffs now may generally bring their claims in the forum in which they arose. As a result,

> "obsolescing notions of general jurisdiction," which functioned primarily to ensure that a forum was available for plaintiffs to bring their claims, have been rendered largely unnecessary. Thus, broad constructions of general jurisdiction should be generally disfavored.

Nichols v. G.D. Searle & Co., 991 F. 2d at 1200 (citations omitted). See also *Follette v. Clairol, Inc.*, 829 F. Supp. 840 (W.D. La. 1993). The classic academic discussion of personal jurisdiction—an article that this Court has cited with approval several times, including in *Helicopteros,* see 466 U.S. at 414 n.8, 415 n.9—reaches the same conclusion. See Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-44, 1177-79 (1966).

4. The expansion of general jurisdiction in several state and federal courts, and the disagreement among the state and lower federal courts, have produced highly damaging consequences. Vague and expansive conceptions of general jurisdiction breed "endless, fact-specific litigation" (*Burnham v. Superior Court*, 495 U.S. 604, 628 (1990) (White, J., concurring)). Unlike the situation with specific jurisdiction, which is bounded by the requirement that the contact be related to the claim, there is no end to the information that might be used to try to establish general jurisdiction: every advertisement, every sale, every visit, letter, telephone call, or electronic mail, that the defendant's personnel might have had with anyone in the forum state— over an indefinite period preceding the litigation—is potentially relevant, and subject to discovery.

More important, the expansion of general jurisdiction threatens, as we have said, to inaugurate an entirely new jurisdictional regime in the United States—one in which corporate defendants can routinely be sued on any claim in a state of the plaintiff's choosing. This is inconsistent with fundamental principles of due process and federalism; it also

produces distortions throughout the legal system. When parties have an unfettered choice of the forum in which they will bring a suit, enormous pressure is placed on questions of choice of law, and on the aspects of our legal system that are designed to ensure that the subject matter of litigation is connected to the forum, such as transfer under 28 U.S.C. 1404(a). See, *e.g.*, *Ferens v. John Deere Co.*, 494 U.S. 516 (1990); *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985). If these developments in judicial federalism are to occur, it should be because this Court has decided that they are acceptable, not because of an accumulation of inconsistent decisions in the state and lower federal courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FOURTH DIVISION

No. 1-99-3015

RICHARD T. ALDERSON, ROBERT A. KALLOK, CYRIL SMOTRILLA, DAVID ARCURI, AND PAUL DANIELSON, PLAINTIFFS-APPELLEES,

v.

SOUTHERN COMPANY; SOUTHERN ENERGY, INC.; SOUTHERN ENERGY RESOURCES, INC.; SOUTHERN ENERGY TRADING AND MARKETING, INC.; SEI STATE LINE, INC.; STATE LINE HOLDING CORPORATION; AND STATE LINE ENERGY, L.L.C., DEFENDANTS-APPELLANTS (SOUTHERN ENERGY NORTH AMERICA, INC.; SOUTHERN ELECTRIC INTERNATIONAL, INC. AND COMMONWEALTH EDISON), DEFENDANTS.

March 22, 2001
Rehearing Denied May 9, 2001

Justice BARTH delivered the opinion of the court:

I. INTRODUCTION

The appellants in this case are affiliated corporations that allegedly owned, possessed, or operated the premises where the accident giving rise to this dispute occurred. They appeal from the order of the circuit court which denied their motions to dismiss the actions against them for lack of in personam jurisdiction. We affirm in part, reverse in part, and remand the cause to the circuit court for further proceedings.

II. BACKGROUND

The complaints in these consolidated cases stem from injuries plaintiffs Richard T. Alderson, Robert A. Kallok, Cyril Smotrilla, Paul Danielson, and David Arcuri sustained in a July 28, 1998, coal dust explosion at the State Line Generating Station (Power Plant) in Hammond, Indiana (Hammond). The Power Plant abuts the Indiana Illinois state line. Plaintiffs are employees of Indiana contractors that were performing services at the Power Plant at the time of the explosion. Alderson, Kallok, Arcuri, and Danielson are Indiana residents.

The complaints name as defendants Southern Company (Southern), Southern Energy, Inc. (Southern Energy), Southern Energy Resources, Inc. (Southern Energy Resources), Southern Energy Trading and Marketing, Inc. (Southern Energy Trading and Marketing), Southern Electric International, Inc. (Southern Electric International), Southern Energy North America, Inc. (Southern Energy North America), State Line Energy, L.L.C. (State Line Energy), SEI State Line, Inc. (SEI), State Line Holding Corp. (State Line Holding), and Commonwealth Edison. Plaintiffs alleged that all defendants other than Commonwealth Edison (hereinafter referred to collectively as defendants) owned and operated the Power Plant on the date of the accident.

The complaints contain counts against defendants sounding in negligence and res ipsa loquitur and allege general negligence in the operation and maintenance of the Power Plant. Defendants filed a special appearance and a motion to dismiss for lack of in personam jurisdiction. In the motion, defendants asserted that they do not transact business, own property, maintain offices, or have employees in Illinois and attached affidavits of officers or employees to support these assertions.

The trial court granted plaintiffs leave to conduct limited discovery on the issue of jurisdiction before responding to the

motion. Discovery revealed the following pertinent facts. Southern is essentially a holding company organized primarily to acquire and hold the securities of electric power, light and gas, and other public utility companies. It is the parent corporation of Southern Energy. Southern Energy North America is a wholly-owned subsidiary of Southern Energy. Southern Energy North America owns SEI and State Line Holding. Southern Energy Trading and Marketing was the entity within the Southern organization which facilitated the trading of energy resources among utility companies. According to deposition witnesses, in September 1997, Southern Energy Trading and Marketing merged with another corporation to form Southern Company Energy Marketing. Southern Energy Trading and Marketing maintains a registered agent for service of process in Illinois. Each defendant just described is a Delaware corporation and has its principal office in Georgia.

SEI and State Line Holding own State Line Energy. State Line Energy is an Indiana limited liability company and owns the power plant and its equipment. State Line Energy has no employees. All personnel at the Power Plant on the date of the accident were employees of Southern Energy Resources. Many of the workers employed at the Power Plant are Illinois residents. As is the case with State Line Energy, most of the Southern entities do not have employees but instead draw their personnel from Southern Energy Resources. A subsidiary of Southern Energy, Southern Energy Resources is a Delaware corporation, has its principal office in Georgia, and maintains a registered agent for service in Illinois. Plaintiffs served summons upon the Illinois registered agents of Southern Energy Trading and Marketing and Southern Energy Resources. With the exception of the suits filed in connection with the July 28, 1998, incident, defendants have never been sued in Illinois.

Pursuant to an Asset Sale Agreement dated April 17, 1996, State Line Energy purchased the Power Plant from Commonwealth Edison Company of Indiana, Inc., a wholly-owned subsidiary of Commonwealth Edison. On that same date, State Line Energy executed a Power Purchase Agreement under which it agreed to supply the Power Plant's electrical output exclusively to Commonwealth Edison for 15 years. This agreement required State Line Energy to commit the Power Plant's normal operating capacity, 490 megawatts at the time the parties entered into the agreement, to Commonwealth Edison. The Power Purchase Agreement also granted Commonwealth Edison a right of first refusal regarding any power generated beyond 490 megawatts.

Commonwealth Edison retained title to equipment on the Power Plant premises to enable it to take title to the electricity at that location. It distributed the power from there to its customers. Both the Asset Sale Agreement and the Power Purchase Agreement were executed in Illinois and contained Illinois choice-of-law provisions. The notice provisions in both agreements directed that communications to State Line Energy be sent to the offices of SEI in Georgia.

There are several other agreements that define the relationship between State Line Energy and Commonwealth Edison. Pursuant to a Coal Supply Agreement dated December 29, 1997, Commonwealth Edison agreed to supply all of the coal required to satisfy State Line Energy's obligations under the Power Purchase Agreement. The Coal Supply Agreement contained an Illinois choice-of-law provision, a venue provision designating Illinois as the chosen forum for any action to enforce the provisions of the agreement, and a notice provision providing that communications to State Line Energy be sent to its Hammond, Indiana, address.

A Facilities Agreement dated December 30, 1997, sets forth State Line Energy's obligations regarding the maintenance of certain equipment at the Power Plant to ensure the

reliable delivery of electrical power to Commonwealth Edison. The Facilities Agreement also provided for a communications link, in the form of a dedicated telephone line, between the Power Plant and Commonwealth Edison offices in Illinois. The purpose of the dedicated line was to allow the parties to the agreement to communicate regarding output requirements and conditions affecting the output or reliability of the Power Plant. The Facilities Agreement likewise contained an Illinois choice-of-law provision and a notice provision directing that communications to State Line Energy be sent to the offices of SEI in Georgia.

In a Consulting Services Agreement dated January 1, 1998, Commonwealth Edison undertook to provide consulting services to State Line Energy. This agreement contained an Indiana choice-of-law provision and a notice provision directing that any communications to State Line Energy be sent either to a post office box in Chicago or to its Hammond address.

In a Training Services Agreement dated June 10, 1998, Commonwealth Edison agreed to provide emergency response training to State Line Energy at a Commonwealth Edison facility in Illinois. This agreement listed State Line Energy's Chicago post office box address and contained an Illinois choice-of- law provision.

In connection with its purchase of the Power Plant, State Line Energy filed a petition requesting that the Indiana Utility Regulatory Commission (IURC) refrain from asserting jurisdiction over the Power Plant's operation. In the petition, State Line Energy stated that, because of its obligations under the Power Purchase Agreement, it would not be making any sale of power to a retail customer in Indiana or elsewhere. The petition further stated that the "Illinois Commerce Commission is currently conducting hearings on the proposed transaction and impacts in Illinois where most, if not all, of the Plant's output will be utilized. It is not anticipated that any of the Plant's power will be sold or used in Indiana at

wholesale or retail." The petition further represented that, as an exempt wholesale generator, State Line Energy was subject to the regulation of the Federal Energy Regulatory Commission and that Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison.[1]

The discovery materials also contain the deposition testimony of several witnesses. In his deposition, Randall Harrison testified that he is employed by Southern Energy Resources. He was one of the employees primarily responsible for overseeing State Line Energy's purchase of the Power Plant. Discovery materials also reveal that, as of October 12, 1998, Harrison was a vice-president of Southern Energy and a vice-president of Southern Energy Resources. Harrison testified that at least part of the transaction required the approval of the Illinois Commerce Commission. It was his belief that State Line Energy's petition to the IURC was unsuccessful. Harrison testified that the Asset Sale Agreement required the approval of the board of directors of SEI and Southern Energy and the finance committee of the Southern board of directors. According to Harrison, SEI functioned as the manager of the Power Plant and oversaw its day-to-day operations.

At the time he was negotiating the purchase of the Power Plant, Harrison was not aware of where the electricity to be sold to Commonwealth Edison would ultimately be consumed. What Commonwealth Edison did with the electricity after purchasing it was not a concern of any of the Southern entities.

Harrison also testified that, in 1993, Southern Energy made a bid to purchase the Fisk generating station in Illinois, but was unsuccessful. In 1995, Southern Energy made an

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[1] State Line Energy asserts that it has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois. *See* 220 ILCS 5/8-406 (West 1996).

unsuccessful bid to purchase the Kincaid generating station, also in Illinois.[2] At the time Harrison gave the deposition, the Southern companies were considering purchasing other Illinois generating stations from Commonwealth Edison.

Harrison's deposition reveals that he and other employees of the various Southern Companies made several trips to Illinois during the course of the negotiations surrounding the purchase of the Power Plant and in connection with attempts to purchase other Commonwealth Edison generating stations. Harrison's testimony also referenced several trips he and other employees made to Illinois before the accident in this case. The purpose of these trips was to attend meetings or trade conferences which had no bearing on the Power Plant purchase or the Kincaid and Fisk proposals. According to Harrison, these meetings did not relate to any actual business being conducted in Illinois. For example, some of these meetings involved projects or business in other states or abroad.

In his deposition, Alan Harrelson testified that he is an employee of Southern Energy Resources and a vice-president of SEI and State Line Holding and has his office in Georgia. Discovery materials reveal that, as of October 12, 1998, Harrelson was a vice-president of Southern Energy and Southern Energy Resources. Harrelson's duties included overseeing the operations of the Power Plant.

Harrelson explained that there were times when the Power Plant's excess capacity was sold to other customers through Southern Company Energy Marketing, the successor-in-interest of Southern Energy Trading and Marketing. Answers to interrogatories reveal that, in July 1998, State Line Energy delivered power to a utility in Ohio. Also in July 1998, State Line Energy sold power to the Illinois Municipal Electric Agency (IMEA). According to answers to interrogatories,

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[2] Answers to interrogatories state, however, that Southern Electric International was the company that bid on the Kincaid plant.

IMEA received and took title to the electricity on the Power Plant premises. Harrelson did not know whether any of this excess capacity was ultimately sold or consumed in Illinois. He also explained that the purpose of the Consulting Services Agreement was to help aid in the transition of the Power Plant's ownership by allowing State Line Energy to utilize the knowledge of certain Commonwealth Edison employees regarding the operation of the Power Plant.

Harrelson testified that Southern advertises nationally, including in Illinois, and maintains an Internet site accessible to Illinois residents. When asked why Southern would advertise in Illinois if it claimed that it did not do business there, Harrelson responded that the purpose of the advertising was to build name recognition in the event any Southern companies ever did conduct business in Illinois. It was Harrelson's belief that the explosion caused instability to Commonwealth Edison's system and resulted in some power outages in Illinois.

In his deposition, Thomas Boren testified that he is the president and chief executive officer of Southern Energy. He is also the president of State Line Holding and Southern Electric International and serves on the board of directors of SEI. Discovery materials reveal that, as of October 12, 1998, Boren served as a senior vice-president of Southern and the president and chief executive officer of Southern Energy Resources.

Boren described Southern Energy as an "umbrella" company that holds all of the common stock of about 200 companies. When asked about SEI and State Line Holding, Boren explained that, sometimes, Southern Energy will form a company "just to do bidding," for tax purposes, "and then ultimately we have companies that actually own the assets that we're doing business out of." Boren's involvement in the purchase of the Power Plant was limited to reviewing the investment opportunity in his capacity as president of

Southern Energy and as a member of the Southern Energy board. He did not participate in the negotiations leading to the purchase.

Boren testified that, in the summer of 1998, Southern Company Energy Marketing entered into a power supply contract with the City of Springfield, Illinois (Springfield). However, Springfield defaulted on that contract, and Southern Company Energy Marketing ended up filing suit against Springfield.

At the time of the accident, Sheri Marcelene Fuller was the president of SEI and a vice-president of State Line Holding. She also was a senior vice- president of Southern Energy and Southern Energy Resources. She was on the board of directors of State Line Holding and SEI, a director and executive vice-president of Southern Energy Trading and Marketing, a vice-president of Southern Electric International, and a director and vice-president of Southern Energy North America. In her deposition, Fuller testified that she is currently an employee of Southern Energy Resources and a director of State Line Energy. She also testified that she was the person ultimately in charge of the Power Plant purchase. She has traveled to the Power Plant twice, both times to attend board meetings.

Fuller estimated that she has traveled to Illinois for business reasons approximately 10 times since 1993. She traveled to the Chicago Board of Trade once because Southern Energy was contemplating entering the commodity trading business. She visited the offices of Duff & Phelps, a credit rating agency in Illinois, to obtain a credit rating for Southern Energy. She also visited Chicago on several occasions in connection with the proposed purchase of power plants from Commonwealth Edison. Fuller also attended meetings in Chicago regarding projects in other states or countries.

Fuller testified that, in August 1997, Southern Energy Trading and Marketing contracted for an option to purchase power from Springfield for delivery in Ohio, and vice versa. Southern Company Energy Marketing exercised the option in the summer of 1998, but Springfield failed to deliver the power as requested. According to Fuller, the suit against Springfield was filed in Georgia.

Also, Southern Company Energy Marketing entered into an alliance with Kinder-Morgan, Inc. (Kinder-Morgan) granting Southern Company Energy Marketing access to Kinder-Morgan's facility in Cora, Illinois, to purchase and sell coal. Finally, Fuller was of the belief that the IURC rejected State Line's petition and asserted jurisdiction over the Power Plant.

Steven Owen testified that he is an Illinois resident and an employee of Southern Energy Resources. He was a business unit manager of State Line Energy at the time of the accident. He explained that, before it purchased the Power Plant, State Line Energy established a Chicago post office box address near the Power Plant. After the purchase, State Line Energy established its official Hammond address. It was Owen's belief that, as of late in June or early in July 1998, State Line no longer maintained the Illinois address. The record contains a memo from Owen to a Commonwealth Edison employee dated June 11, 1998. The memo contains a notice of State Line Energy's change to the Hammond post office box. The letter was printed on State Line Energy's letterhead, which contains the Southern name and logo.

Owen also testified that, in the course of his employment with Southern Energy Resources, he has traveled to Illinois airports and has attended two to three conferences in Illinois. According to Owen, neither Southern nor any of its affiliates maintained a booth at these conferences. Owen's purpose for attending these trips was merely to gather technical

information and to network with others in the industry. Also, on three or four occasions, Owen met in Illinois with employees of Commonwealth Edison.

Owen testified that State Line Energy pays $3,672 per month to store 200 to 225 pallet loads of spare parts at Commonwealth Edison's centralized warehouse. He explained that State Line Energy acquired these parts in connection with the purchase of the Power Plant and that it was in the process of moving them to the Power Plant. It was Owen's understanding that State Line Energy did not pay taxes on the spare parts while they were in Illinois but would have to pay a personal property tax once the parts were moved to Indiana. According to Owen, pursuant to the consulting services agreement, Commonwealth Edison has performed services for State Line Energy, such as testing, that took place in Illinois.

According to Owen, the main entrance to the Power Plant lies just on the Indiana side of the state line, and the private road that leads to the main entrance lies partly in Illinois. It was Owen's understanding that State Line Energy possesses an easement over the road to allow access to the main entrance. The Power Plant has a connection to the City of Chicago sewer system, and the Chicago police and fire departments responded on the day of the explosion. Owen estimated that the sale of electricity to Commonwealth Edison accounted for about $20 to $25 million in annual revenue while sales to other utilities generated less than $1 million in annual revenue.

In his deposition, John Long testified that he is a vice-president of Commonwealth Edison and, before the sale, served as an assistant manager and plant manager at the Power Plant. Long confirmed that Commonwealth Edison takes possession of the electricity at the Power Plant and eventually sells it either to retail or wholesale customers. All of Commonwealth Edison's retail customers are in Illinois.

According to Long, the explosion at the Power Plant did not result in any power outages in Illinois, but did cause momentary decreases in voltage across the Commonwealth Edison system.

Long also explained that the Power Plant supplies its own electricity needs as long as it is in service. If the Power Plant were not in service, then Commonwealth Edison would supply the Power Plant with electricity. The electricity Commonwealth Edison supplies to the Power Plant generally originates in Illinois.

Long further testified that fire brigade workers employed at the Power Plant attended fire and emergency training that Commonwealth Edison conducted at one of its Illinois facilities. Commonwealth Edison also provided emission reports to environmental regulatory agencies on behalf of State Line Energy. To compile these reports, Commonwealth Edison employees in Illinois obtained information via modem from monitoring equipment located at the Power Plant.

In his testimony, Long discussed several trips to Illinois that representatives of various Southern subsidiaries made to Illinois in connection with the purchase of the Power Plant and the proposed purchases of Commonwealth Edison generating stations in Illinois. These trips occurred both before and after the date of the accident. Long also testified that either Southern or one of its affiliated companies had an exhibit at the Edison Electric Institute annual convention in Illinois.

In answers to interrogatories, defendants Southern, Southern Energy, and Southern Energy Resources stated that, between 1993 and June 1998, employees attended 12 trade shows in Illinois. These defendants maintained a booth or exhibit at four of these events. There is no evidence that these defendants actually conducted business at any of these shows.

In a written opinion and order, the trial court granted the motion to dismiss in favor of defendants Southern Electric International and Southern Energy North America but denied the motion with regard to the remaining defendants. The trial court initially found that section 2-209(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-209(a) (West 1998)) did not provide a basis for asserting in personam jurisdiction over any of the defendants because plaintiffs' causes of action did not arise from defendants' alleged transaction of business, ownership, possession, or use of property, or the making of any contract in Illinois.

The trial court next considered whether defendants were subject to in personam jurisdiction because they were "doing business" in Illinois. *See* 735 ILCS 5/2-209(b)(4) (West 1998). The court found that, because they had registered agents in Illinois, defendants Southern Energy Resources and Southern Energy Trading and Marketing were subject to in personam jurisdiction. The trial court further found that, as the operators of the Power Plant, State Line Energy and SEI were doing business in Illinois because Commonwealth Edison, an Illinois company, purchased essentially all of the Power Plant's output. The court also concluded that asserting in personam jurisdiction over State Line Energy and SEI comported with due process principles and, accordingly, that it would be appropriate to assert in personam jurisdiction over these defendants pursuant to section 2-209(c) of the Code (735 ILCS 5/2-209(c) (West 1998)).

The trial court also found that it was appropriate to assert in personam jurisdiction over Southern, Southern Energy, and State Line Holding under the theory set forth in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 68 Ill.Dec. 450, 445 N.E.2d 1303 (1983), *aff'd*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984). According to the court, these defendants "have organized themselves in such a way as to blur the distinction of separate corporate identities

so as to preclude them from asserting that they are separate and distinct corporate identities which prevent the imposition of in personam jurisdiction." The court found, however, that plaintiffs failed to establish sufficient affiliating circumstances to enable the court to exercise in personam jurisdiction over Southern Electric International and Southern Energy North America.

Southern, Southern Energy, Southern Energy Resources, Southern Energy Trading and Marketing, SEI, State Line Holding, and State Line Energy (appellants) petitioned this court for leave to appeal pursuant to Supreme Court Rule 306(a)(3) (166 Ill.2d R. 306(a)(3)). We granted the petition.

On August 8, 2000, Commonwealth Edison filed in the circuit court a cross- claim against State Line Energy. In its claim, Commonwealth Edison seeks indemnity pursuant to the Coal Supply Agreement.[3]

III. DISCUSSION

A. Request to Strike Appellants' Brief

In their reply brief, plaintiffs Alderson, Kallok and Smotrilla have asked this court to strike appellants' brief and dismiss the appeal on the ground that it contains an inadequate statement of facts. These plaintiffs are correct in noting that appellants' 2 1/2-page statement of facts omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' position.

Supreme Court Rule 341(e)(6) requires that an appellant's statement of facts "contain the facts necessary to an understanding of the case, stated accurately and fairly * * *." 166 Ill.2d R. 341(e)(6). The appellate court has the discretion

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[3] We granted plaintiffs leave to supplement the record on appeal with Commonwealth Edison's cross-complaint.

to strike an appellant's brief and dismiss the appeal as a result of the appellant's failure to provide a complete statement of facts. *Ryan v. Katz*, 234 Ill.App.3d 536, 537, 175 Ill.Dec. 748, 600 N.E.2d 1206, 1207 (1992). The inadequate statement of facts in appellants' brief is significant here because the record on appeal is long and the facts are complex. Although appellants' statement of facts is grossly inadequate, this appeal raises significant issues implicating appellants' constitutional rights, and appellants' brief contains a thorough discussion of those issues. For these reasons, we conclude that the interests of justice require an examination of the merits. *See Luttrell v. Panozzo*, 252 Ill.App.3d 597, 600, 192 Ill.Dec. 540, 625 N.E.2d 695, 698 (1993) (examining merits of appeal in "interests of justice" despite appellant's failure to present cogent argument).

We caution, however, that our decision not to strike appellants' brief "should not be interpreted as a signal that we are willing, as a matter of course, to overlook violations of the Supreme Court Rules in briefs filed with this court. We are not." *Buckner v. Causey*, 311 Ill.App.3d 139, 142, 243 Ill.Dec. 786, 724 N.E.2d 95, 99 (1999). We merely have concluded that the nature of the issues on appeal is such that a review of the merits is warranted.

B. Section 2-209 of the Code

Section 2-209 of the Code states in pertinent part:

> "(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> (1) The transaction of any business within this State;

(2) The commission of a tortious act within this State;

(3) The ownership, use, or possession of any real estate situated in this State;

* * *

(7) The making or performance of any contract or promise substantially connected with this State;

* * *

(b) A court may exercise jurisdiction in any action arising within or without this State against any person who:

* * *

(4) Is a natural person or corporation doing business within this State.

(c) A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.

* * *

(f) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a)." 735 ILCS 5/2-209 (West 1998).

C. Burden of Proof and Standard of Review

A plaintiff has the burden of establishing a prima facie basis for exercising in personam jurisdiction over a defendant. *Kalata v. Healy*, 312 Ill.App.3d 761, 765, 245 Ill.Dec. 566, 728 N.E.2d 648, 651-52 (2000); *International Business Machines Corp. v. Martin Property & Casualty Insurance Agency, Inc.*, 281 Ill.App.3d 854, 857-58, 217 Ill.Dec. 197, 666 N.E.2d 866, 868 (1996). A plaintiff's prima facie case may be overcome by a defendant's uncontradicted

evidence that defeats jurisdiction. *Gaidar v. Tippecanoe Distribution Service, Inc.*, 299 Ill.App.3d 1034, 1041, 234 Ill.Dec. 150, 702 N.E.2d 316, 320 (1998).

When the trial court hears no courtroom testimony and determines jurisdiction solely on the basis of documentary evidence, the trial court is not in a better position than the reviewing court to assess credibility or weigh the evidence. Therefore, in this situation, the standard of review is de novo. *Stein v. Rio Parismina Lodge*, 296 Ill.App.3d 520, 523, 231 Ill.Dec. 1, 695 N.E.2d 518, 521 (1998); *E.A. Cox Co. v. Road Savers International Corp.*, 271 Ill.App.3d 144, 148, 207 Ill.Dec. 815, 648 N.E.2d 271, 275 (1995).

In *Gaidar*, the trial court granted limited discovery on the issue of in personam jurisdiction. The discovery materials included deposition testimony. This court determined that, because there were no conflicts in the evidence or credibility determinations to resolve, the trial court had only a question of law before it. Thus, a de novo standard of review was appropriate. *Gaidar*, 299 Ill.App.3d at 1039-40, 234 Ill.Dec. 150, 702 N.E.2d at 319. Here, there exists no material dispute regarding the facts uncovered during discovery, only the legal conclusions to be drawn from those facts. Accordingly, it is appropriate to review the trial court's ruling de novo.

D. Long-Arm Statute: Section 2-209(a) of the Code

Plaintiffs Alderson, Kallok, and Smotrilla argue that trial court properly could have asserted jurisdiction over appellants pursuant to section 2-209(a) of the Code. State Line Energy entered into several agreements with Commonwealth Edison in connection with the purchase of the Power Plant. These agreements were executed in Illinois and contained Illinois choice-of-law provisions. Also, to the extent that it possessed easement rights over the road leading to the Power Plant entrance, State Line Energy used or possessed real estate located in Illinois.

Where jurisdiction is predicated upon section 2-209(a), only causes of action arising from the enumerated acts may be asserted against a nonresident defendant. 735 ILCS 5/2-209(f) (West 1998). The purpose of the statutory phrase "arising from" is to ensure that there is a close relationship between a cause of action against a nonresident defendant and its jurisdictional activities. *Gaidar*, 299 Ill.App.3d at 1046, 234 Ill.Dec. at 157, 702 N.E.2d at 323 (plaintiff's cause of action for injuries sustained in Indiana automobile accident did not arise from defendant's transaction of business in Illinois even though defendant's truck had been in Illinois earlier on day of accident). A plaintiff's claim must be one that lies in the wake of commercial activities by which the defendant submitted to the jurisdiction of Illinois. *Kalata*, 312 Ill.App.3d at 767, 245 Ill.Dec. 566, 728 N.E.2d at 653.

Here, plaintiffs' causes of action do not arise from any of defendants' contracts or transactions in Illinois. Plaintiffs' injuries arise from State Line Energy's operation and maintenance of the Power Plant and not from any acts directly connected with the performance of the agreements with Commonwealth Edison. *See, e.g., Cook Associates, Inc. v. Lexington United Corp.*, 87 Ill.2d 190, 198-99, 57 Ill.Dec. 730, 429 N.E.2d 847, 850-51 (1981) (Illinois employment agency's breach of contract action seeking payment of placement commission did not arise out of foreign corporation's activities in Illinois; although corporation interviewed candidate in Illinois initially, candidate rejected offer and later interviewed and accepted offer for different position).

Plaintiffs are not parties to any of the Illinois transactions involving State Line Energy and are not seeking to recover for a breach of any of the agreements underlying these transactions. *See, e.g., D.S. America (East) Inc. v. Elmendorf Grafica, Inc.*, 274 Ill.App.3d 643, 650-51, 211 Ill.Dec. 10, 15-16, 654 N.E.2d 472, 477-78 (1995); *Swissland Packing Co. v. Cox*, 255 Ill.App.3d 942, 944, 194 Ill.Dec. 349, 627

N.E.2d 686, 688 (1994); *G.M. Signs, Inc. v. Kirn Signs, Inc.*, 231 Ill.App.3d 339, 172 Ill.Dec. 933, 596 N.E.2d 212 (1992). Instead, plaintiffs are asserting premises liability claims that arose in Indiana and do not arise from any of the Illinois contracts or transactions. *See, e.g., Huffman v. Inland Oil & Transport Co.*, 98 Ill.App.3d 1010, 1016, 54 Ill.Dec. 306, 424 N.E.2d 1209, 1214 (1981) (plaintiff's cause of action for injuries sustained while working on defendant's towboat in Alabama did not arise from commercial activities of defendant in Illinois).

Plaintiffs also contend that their causes of action arise out of the Illinois transactions between State Line Energy and Commonwealth Edison by virtue of the maintenance obligations that the Facilities Agreement and the Coal Supply Agreement impose upon State Line Energy. In support of their contention, plaintiffs point to Commonwealth Edison's cross- claim against State Line Energy. These considerations do not change our conclusion. The contractual obligations here do not relate to plaintiffs' common-law premises liability claims. Both the Facilities Agreement and the Coal Supply Agreement contain provisions to the effect that nothing in those agreements shall be construed to create any duty or standard of care with reference to any person who is not a party to those agreements. One of the concepts underlying the "arising out of" analysis is that "individuals and corporations must be able to conduct interstate business confident that transactions in one context will not come back to haunt them unexpectedly in another." *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1278 (7th Cir.1997). Here, it is not reasonably foreseeable that the individual agreements State Line Energy entered into with Commonwealth Edison would provide the sole basis for an Illinois court to assert in personam jurisdiction over State Line Energy for a premises liability action arising in Indiana.

In a similar vein, plaintiffs' causes of action do not arise out of State Line Energy's use of its easement over the Illinois portion of the road leading to the Power Plant. Plaintiffs' actions have no connection to State Line Energy's use of this real estate other than the fact that plaintiffs may have had to use this road to enter the Power Plant on the date of the accident. Plaintiffs sustained their injuries while performing work on the Power Plant premises and not while they were using the road.

For these reasons, the trial court correctly concluded that section 2-209(a) of the Code does not provide a basis for asserting jurisdiction over State Line Energy or any of the other defendants.

E. Doing Business—Section 2-209(b)(4) of the Code

The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum. *Cook Associates*, Inc., 87 Ill.2d at 201, 57 Ill.Dec. 730, 429 N.E.2d at 852 [4]; *Stein*, 296 Ill.App.3d at 527, 231 Ill.Dec. 1, 695 N.E.2d at 523; *Natural Gas Pipeline Co. v. Mobil Rocky Mountain, Inc.*, 155 Ill.App.3d 841, 843, 108 Ill.Dec. 50, 508 N.E.2d 211, 212 (1986) (*Mobil Rocky Mountain*). The defendant must transact business in Illinois "'not occasionally or casually, but with a fair measure of permanence and continuity.'" *Stein*, 296 Ill.App.3d at 527, 231 Ill.Dec. 1, 695 N.E.2d at 523, quoting *Cook Associates, Inc.*, 87 Ill.2d at 203, 57 Ill.Dec. 730, 429 N.E.2d at 853. Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. *Gaidar*, 299 Ill.App.3d at 1041, 234 Ill.Dec. 150, 702 N.E.2d at 320;

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[4] The Illinois courts applied the doing-business doctrine before it became a part of section 2-209 effective in 1989. *Gaidar*, 299 Ill.App.3d at 1041, 234 Ill.Dec. 150, 702 N.E.2d at 320.

Radosta v. Devil's Head Ski Lodge, 172 Ill.App.3d 289, 293, 122 Ill.Dec. 302, 526 N.E.2d 561, 564 (1988). Once the doing business standard is satisfied, the defendant is deemed a resident of Illinois and may be sued on causes of action both related and unrelated to its Illinois activities. *Mobil Rocky Mountain*, 155 Ill.App.3d at 843, 108 Ill.Dec. 50, 508 N.E.2d at 212.

We begin with an analysis of the activities of State Line Energy and conclude that the undisputed facts affirmatively demonstrate that State Line Energy is "doing business" in Illinois. State Line Energy committed to sell the Power Plant's electrical output to Commonwealth Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison. The contracts establishing this relationship were entered into in Illinois and made subject to Illinois law. As State Line Energy's petition to the IURC reveals, State Line Energy fully realized and anticipated that "most, if not all" of the Power Plant's output would be consumed in Illinois.

State Line Energy relies heavily on the fact that it maintains no offices or sales activities in Illinois, that Commonwealth Edison takes "title" to the electricity in Indiana, and that it has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois. State Line Energy's reliance on these facts ignores the economic reality of its business. Although courts upholding the exercise of in personam jurisdiction over foreign corporations pursuant to section 2-209(b)(4) have based their findings on factors such as offices or sales activities in Illinois, each case requires an independent determination of whether, under all of the circumstances, it would be fair to subject a defendant to the jurisdiction of the Illinois courts. *Colletti v. Crudele*, 169 Ill.App.3d 1068, 1079-81, 120 Ill.Dec. 311, 523 N.E.2d 1222, 1229 (1988)

(Florida trucking company, which made an average of a dozen trips to Illinois per year for local industrial consignees, conducted sufficient in-state activities to subject it to in personam jurisdiction under "doing business" doctrine upon claim arising from Kentucky automobile accident).

In *Connelly v. Uniroyal, Inc.*, 75 Ill.2d 393, 27 Ill.Dec. 343, 389 N.E.2d 155 (1979), the court held that the substantial profit-making activities of a nonresident manufacturer in Illinois invokes the benefits of the forum state so that, when its goods cause injury because of a defect, Illinois courts will hold the defendant amenable to service of process. *Connelly*, 75 Ill.2d at 404-06, 27 Ill.Dec. 343, 389 N.E.2d at 160. In *Connelly*, a tire on an automobile purchased in Illinois caused injury to the plaintiff while he was riding the automobile in Colorado. The defendant that manufactured the tire was a Belgian corporation with no direct presence in Illinois. It manufactured tires in Belgium and sold them to General Motors in Belgium. General Motors assembled the automobiles in Belgium and shipped them to the United States for distribution. The evidence revealed that, during each of the years in question, between 3,235 and 6,630 automobiles equipped with the defendant's tires were delivered for sale in Illinois. In upholding the exercise of in personam jurisdiction over the Belgian manufacturer, the *Connelly* court relied on the fact that its product came into Illinois regularly and in substantial numbers. *Connelly*, 75 Ill.2d at 406, 27 Ill.Dec. 343, 389 N.E.2d at 160.

In *Mobil Rocky Mountain*, the court declined to apply *Connelly* outside the context of a product liability action. *Mobil Rocky Mountain*, 155 Ill.App.3d at 843, 108 Ill.Dec. 50, 508 N.E.2d at 213. Thus, substantial revenues from sales in Illinois are not enough to satisfy the "doing business" standard in cases not involving product defects. *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill.App.3d 308, 319, 171 Ill.Dec. 670, 594 N.E.2d 1190, 1198 (1992).

Because plaintiff's causes of action here do not involve injuries resulting from the sale of State Line Energy's product, the jurisdictional issue presented here does not fall squarely within the framework of *Connelly*. However, in addition to continuous and substantial revenues derived from the sale of its product to an Illinois utility, there exists activity specifically directed toward the Illinois market. State Line Energy has established an essentially exclusive relationship with Commonwealth Edison that, as a practical matter, serves as the basis for its existence. The core purpose of this relationship is to generate electrical power, primarily for ultimate consumption in Illinois. Therefore, this is not a situation where State Line Energy plausibly can claim as fortuitous the fact that the electricity it generates in Indiana ultimately is consumed in Illinois. Also, because the Power Plant sits on the state line, receives some services from the City of Chicago and Commonwealth Edison, and makes use of an easement in Illinois to facilitate entrance into the Power Plant, State Line Energy is more like a resident of Illinois than most out-of-state businesses. For these reasons, the fact that State Line Energy maintains no offices in Illinois and does not directly deliver its product into Illinois is of less significance. *See Japax, Inc. v. Sodick Co.*, 186 Ill.App.3d 656, 663-64, 134 Ill.Dec. 446, 542 N.E.2d 792, 796-97 (1989) (where Japanese manufacturer's products came into Illinois as part of plan to sell regularly in Illinois, manufacturer was "doing business" in Illinois even though products leaving Japanese plant were initially sold in Japan to intermediaries who sold products in United States).

State Line Energy's claim that it lacks a certificate of public convenience and necessity pursuant to section 8-406 of the Public Utilities Act (220 ILCS 5/8-406 (West 1996)) and therefore cannot "do business" in Illinois is unavailing. The Public Utilities Act governs generating facilities within Illinois. 220 ILCS 5/3-105 (West 1996). The purpose of

requiring a certificate of public convenience and necessity is to prevent unnecessary duplication of facilities and to protect the public from inadequate service and higher rates resulting from such duplication, while simultaneously protecting a utility against indiscriminate or ruinous competition. *Citizens United for Responsible Energy Development, Inc. v. Illinois Commerce Comm'n*, 285 Ill.App.3d 82, 89, 220 Ill.Dec. 738, 673 N.E.2d 1159, 1165 (1996). There is nothing in the Public Utilities Act which forecloses a conclusion that, by delivering electrical power wholesale to an Illinois utility, State Line Energy is "doing business" in Illinois.

Defendants cite to three decisions that merit discussion here. In *Mobil Rocky Mountain*, the defendant was a Delaware corporation with its headquarters in Colorado. The plaintiff was a Delaware corporation that bought and sold natural gas and had its headquarters in Illinois. It entered into a natural gas purchase contract with a supplier, which later assigned its rights under the contract to the defendant. The original parties negotiated and signed the contract outside of Illinois. The contract called for the defendant to deliver the gas to the plaintiff in Wyoming, where title passed. When the market price for natural gas fell below the contract price, the plaintiff brought a declaratory judgment action in Illinois to dispute the quantity term in the contract.

In concluding that the "doing business" standard was not satisfied, the court stated:

> "Defendant never conducted business within Illinois, nor did it maintain offices or employees here. Furthermore, it never solicited business in Illinois. It merely sold gas to an Illinois resident for distribution in Illinois and presumably elsewhere. Such business activities do not demonstrate that defendant is doing business so that it may be deemed a resident of Illinois. [Citation .] We are not persuaded that by merely delivering gas to a forum plaintiff outside of Illinois pursuant to one

> contract [defendant] has 'purposefully availed itself of the market for its products' in Illinois." *Mobil Rocky Mountain*, 155 Ill.App.3d at 845, 108 Ill.Dec. 50, 508 N.E.2d at 213-14.

Mobil Rocky Mountain is distinguishable because, unlike the defendant there, State Line Energy has purposefully directed its activities toward the Illinois market. The Power Purchase Agreement and the other relevant agreements are Illinois contracts. Also absent from *Mobil Rocky Mountain* is the exclusivity present here: State Line Energy has committed to sell the Power Plant's base output to an Illinois customer.

In *Huck v. Northern Indiana Public Service Co.*, 117 Ill.App.3d 837, 73 Ill.Dec. 230, 453 N.E.2d 1365 (1983), the plaintiffs were injured in Indiana when the antenna on which they were working came into contact with a power line through which the defendant's electricity flowed. The defendant (NIPSCO) maintained no offices, solicited no business, and had no employees, agents or customers in Illinois.

Pursuant to an interconnection agreement with Commonwealth Edison and Commonwealth Edison Company of Indiana, "NIPSCO will on occasion buy, sell, or interchange power with [Commonwealth Edison] which will utilize the [Commonwealth Edison Company of Indiana] transmission facilities for delivery or receipt of this electric power within the state of Indiana." *Huck*, 117 Ill.App.3d at 841, 73 Ill.Dec. 230, 453 N.E.2d at 1369. NIPSCO's physical plant and equipment dedicated to its arrangement with Commonwealth Edison were located entirely in Indiana. The electricity that defendant supplied to Commonwealth Edison "might" move into Illinois through equipment owned by others in Illinois. Also, the defendant purchased 40% to 50% of its coal from Illinois and used trains leased from an Illinois company to transport the coal, used Illinois banks, owned natural gas pipelines in Indiana that connected to pipelines in Illinois, and used Illinois radio and television stations to advertise.

The court found that these contacts did not rise to the level of "doing business." It also found that no substantial ongoing business contacts between the defendant and Illinois existed as a result of the interconnection agreement. *Huck*, 117 Ill.App.3d at 841, 73 Ill.Dec. 230, 453 N.E.2d at 1368-69. There is nothing in the court's recitation of the facts in *Huck* that suggests NIPSCO maintained the continuous business contacts with Illinois that are present here. To the contrary, the evidence was that, "on occasion," NIPSCO sold power to Commonwealth Edison. Accordingly, *Huck* is distinguishable from this case.

For the same reasons, *Stephens v. Northern Indiana Public Service Co.*, 87 Ill.App.3d 961, 42 Ill.Dec. 808, 409 N.E.2d 423 (1980), which also involved NIPSCO and a similar interconnection agreement, is distinguishable. Additionally, in *Stephens*, the interconnection agreement was between NIPSCO and Commonwealth Edison Company of Indiana. As a result, Commonwealth Edison received power from NIPSCO indirectly. *Stephens*, 87 Ill.App.3d at 968-69, 42 Ill.Dec. 808, 409 N.E.2d at 428.

Although we find that State Line Energy was "doing business" in Illinois, the Illinois activities of the remaining defendants, when viewed apart from the activities of State Line Energy, do not rise to the level of "doing business" in Illinois.[5] The trial court relied solely on plaintiffs' service upon an Illinois registered agent to assert in personam jurisdiction over Southern Energy Trading and Marketing and Southern Energy Resources. The designation of an Illinois registered agent is not an independently determinative factor, however, in determining whether a foreign corporation is doing business in Illinois. *Colletti*, 169 Ill.App.3d at 1080,

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[5] Because plaintiffs have not cross-appealed the dismissals of Southern Electric International and Southern Energy North America, we make no findings regarding these defendants.

120 Ill.Dec. 311, 523 N.E.2d at 1230. There is nothing in section 2-209 of the Code that supports asserting in personam jurisdiction over a corporate defendant simply because the plaintiff served summons upon the defendant's Illinois registered agent.

The primary Illinois contacts attributable to other defendants are trips to Illinois in connection with proposed business ventures, attendance at trade shows, and advertising. Transient contact, such as attendance at trade shows, advertising, or mere solicitation, has been rejected as a jurisdictional basis under section 2-209(b)(4). *Cook Associates, Inc.*, 87 Ill.2d at 203, 57 Ill.Dec. 730, 429 N.E.2d at 853; *Kadala v. Cunard Lines, Ltd.*, 226 Ill.App.3d 302, 315, 168 Ill.Dec. 402, 589 N.E.2d 802, 810 (1992); *Radosta*, 172 Ill.App.3d at 295, 122 Ill.Dec. 302, 526 N.E.2d at 565. Therefore, these contacts clearly do not rise to the level of "doing business."

The other relevant contacts here involve Southern Energy Trading and Marketing, namely, its arrangements with Springfield and Kinder-Morgan. However, Southern Energy Trading and Marketing exercised its option with Springfield only once, and the record contains no evidence regarding the extent of its dealings with Kinder-Morgan. Therefore, these facts do not support a conclusion that Southern Energy Trading and Marketing was conducting business in Illinois with sufficient regularity to warrant a finding that it was "doing business."

F. *Maunder v. DeHavilland Aircraft of Canada, Ltd.*

We next consider whether it would be appropriate to assert jurisdiction over any of the appellants other than State Line Energy under the theory recognized in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984). The trial court concluded that certain defendants organized themselves so as to "blur the distinction of separate corporate identities." This is not the determinative factor in *Maunder*, however.

The theory underlying *Maunder* is that, if a subsidiary corporation is acting as the parent corporation's Illinois agent in the sense of conducting the parent's business rather than its own, then it is appropriate to assert jurisdiction over the parent. Parents of wholly-owned subsidiaries necessarily control, direct, and supervise subsidiaries to some extent. If, however, the subsidiary is conducting its own business, then an Illinois court may not assert in personam jurisdiction over the parent simply because it is the parent. *IDS Life Insurance Co. v. SunAmerica Life Insurance Co.*, 136 F.3d 537, 540-41 (7th Cir.1998). Also, standing alone, the existence of common officers or directors serving both corporations is not sufficient to confer jurisdiction over a nonresident parent corporation. *People v. Parsons Co.*, 122 Ill.App.3d 590, 598, 78 Ill.Dec. 74, 461 N.E.2d 658, 664 (1984).

In *Maunder*, the plaintiffs were injured when an airplane manufactured by the defendant, a Canadian corporation, crashed in Africa. The defendant's wholly-owned subsidiary was a Delaware corporation with its principal office in Illinois. The subsidiary sold and distributed parts for airplanes manufactured by defendant and was the defendant's only distributor in the United States. The defendant and the subsidiary shared most of their officers and used a combined financial statement. The court held that the defendant was "doing business" in Illinois through its subsidiary. *Maunder*, 102 Ill.2d at 352, 80 Ill.Dec. at 770, 466 N.E.2d at 222. In reaching the same conclusion, the appellate court in *Maunder* stated:

> "Defendant regularly and systematically reaped substantial profits through the sale of its parts by its Illinois subsidiary. * * * In light of the control exercised by defendant over [the subsidiary] coupled with its own activities directed at promoting the sale of its product in Illinois, we hold that defendant is actively and systematically doing business in Illinois and is therefore

subject to the jurisdiction of Illinois courts." *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 883, 68 Ill.Dec. 450, 445 N.E.2d 1303, 1306 (1983), *aff'd*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984).

Here, the evidence discloses that, as an owner of State Line Energy, SEI functioned as the manager of the Power Plant and oversaw its day-to-day operations. There is no indication that SEI existed for any other purpose. Therefore, pursuant to *Maunder*, SEI clearly was doing business in Illinois through State Line Energy. The same conclusion obtains with regard to State Line Holding. Harrelson testified that he was a vice-president of both SEI and State Line Holding and that his duties included overseeing the operations of the power plant. As is the case with SEI, there is no indication that State Line Holding existed for any purpose other than to hold the assets and oversee the operation of State Line Energy.

The evidence also warrants a conclusion that Southern and Southern Energy were doing business through State Line Energy. Southern is merely a holding company that has established many subsidiaries to carry out its business. The appearance of the Southern name and logo on State Line Energy's letterhead amply demonstrates this fact. Also telling is Southern's practice of conducting national name-recognition advertising, apparently on behalf of Southern subsidiaries operating in various regions.

Similarly, Southern Energy is primarily a holding company doing business through its subsidiaries. As the testimony of Boren, the president of Southern Energy, reveals, Southern Energy is an "umbrella company" and many of the subsidiary corporations were formed simply to bid on projects or investments, merely for tax purposes, or to own the assets that "we're doing business out of." State Line Energy certainly fits the profile of a subsidiary formed for this purpose.

There is additional evidence of the control that Southern and Southern Energy exerted over State Line Energy. Harrison was a vice-president of Southern Energy and one of the parties primarily responsible for the purchase of the Power Plant. A further indication of control is that the purchase required the approval of the board of directors of Southern Energy and the finance committee of the Southern board of directors. Viewed as a whole, the evidence affirmatively demonstrates that State Line Energy was a "conduit" through which Southern and Southern Energy did business. *See Parsons Co.*, 122 Ill.App.3d at 598, 78 Ill.Dec. 74, 461 N.E.2d at 664.

We believe that applying *Maunder* to Southern, Southern Energy, State Line Holding, and SEI is consistent with the principle underlying that decision, namely, that "a corporation should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its sales force and other operations in each state." *IDS Life Insurance Co.*, 136 F.3d at 541.

Because we have concluded the trial court erroneously found that Southern Energy Resources and Southern Energy Trading and Marketing were " doing business" in Illinois, we briefly consider whether it would be appropriate to apply Maunder to these defendants. Because these two defendants are not parent corporations of State Line Energy, they do not fit within the Maunder framework. Southern Energy Resources supplies State Line Energy with all of its employees. Southern Energy Trading and Marketing acts in the capacity of a broker and on occasion and sells electricity generated at the Power Plant. Unlike a parent corporation such as Southern, neither Southern Energy Resources nor Southern Energy Trading and Marketing is using State Line Energy as a means for generating revenue through the sale of electricity in a specified market. Therefore, despite the close

functional relationship existing between these corporate entities, there is no basis for a conclusion that either Southern Energy Resources or Southern Energy Trading and Marketing is doing business through State Line Energy.

G. Section 2-209(c) of the Code—Due Process

The Legislature added subsection (c) to section 2-209 of the Code in 1989. Illinois courts have treated section 2-209(c) as an independent basis for asserting in personam jurisdiction over a defendant. *Flint v. Court Appointed Special Advocates of Du Page County, Inc.*, 285 Ill.App.3d 152, 165, 221 Ill.Dec. 38, 674 N.E.2d 831, 841 (1996); *Allerion, Inc. v. Nueva Icacos, S.A.*, 283 Ill.App.3d 40, 47, 218 Ill.Dec. 632, 669 N.E.2d 1158, 1163 (1996). Thus, an Illinois court may exercise personal jurisdiction over a nonresident defendant as long as the exercise of such jurisdiction offends neither federal nor state guarantees of due process.

Federal due process requires that, in order to exercise in personam jurisdiction over a nonresident defendant, it is necessary that the defendant have certain "minimum contacts" with the forum state such that the maintenance of the suit there does not offend "'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 283 (1940). Those minimum contacts must have a basis in "'some act by which the defendant purposefully avails itself of the privilege of conducting activities wit n the forum State, thus invoking the benefits and protections of its laws.'" *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109, 107 S.Ct. 1026, 1030, 94 L.Ed.2d 92, 102 (1987), quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528, 542 (1985). Satisfaction of this requirement ensures that an alien

defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts, or the unilateral act of a consumer or some other third person. *Burger King Corp.*, 471 U.S. at 475, 105 S.Ct. at 2183, 85 L.Ed.2d at 542.

A court conducting a federal due process analysis must consider whether (1) the nonresident defendant had "minimum contacts" with the forum state such that there was "fair warning" that the nonresident defendant may be hailed into a forum court; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state. *Burger King Corp.*, 471 U.S. at 471-77, 105 S.Ct. at 2181-84, 85 L.Ed.2d at 540-44; *Kalata*, 312 Ill.App.3d at 768-69, 245 Ill.Dec. 566, 728 N.E.2d at 654.

The "minimum contacts" and "fair warning" requirements are satisfied if the defendant has purposefully directed his activities at Illinois residents, reached out beyond one state to create continuing relationships with citizens of another state, or purposefully derived benefits from its activities within the forum state. *Burger King Corp.*, 471 U.S. at 471-74, 105 S.Ct. at 2181-83, 85 L.Ed.2d at 540-41; *Kalata*, 312 Ill.App.3d at 769, 245 Ill.Dec. 566, 728 N.E.2d at 655. As we discussed in connection with the "doing business" analysis, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. Because these defendants have directed their activities toward the Illinois marketplace and have derived economic benefit as a result of those activities, the fact that the sale of electricity to Commonwealth Edison is technically carried out in Indiana is of no consequence.

The meaning of the "minimum contacts" standard depends upon whether the forum asserts "specific" or "general" jurisdiction. Specific jurisdiction refers to jurisdiction over a defendant in a suit "arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8, 104 S.Ct. 1868, 1872 n. 8, 80 L.Ed.2d 404, 411 n. 8 (1984). General jurisdiction refers to suits neither arising out of nor related to the defendant's contacts, and it is permitted only where the defendant has "continuous and systematic general business contacts" with the forum. *Helicopteros*, 466 U.S. at 416, 104 S.Ct. at 1873, 80 L.Ed.2d at 412.

In specific jurisdiction cases, the action must directly arise out of the contacts between the defendant and the forum. *RAR, Inc.*, 107 F.3d at 1278 (rejecting a "but for" causal analysis). For reasons similar to those we stated in connection with our analysis under section 2-209(a) of the Code, plaintiffs' premises liability actions do not arise directly out of defendants' contacts with Illinois.

We conclude, however, that Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them. We base our conclusion on many of the same factors supporting our conclusion that these defendants are "doing business" in Illinois. These defendants, through State Line Energy, agreed to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years. Therefore, their contacts with Illinois cannot be characterized as random, fortuitous, or attenuated. *See Quaker Oats Co. v. Chelsea Industries, Inc.*, 496 F.Supp. 85, 88 (N.D.Ill.1980) (assertion of jurisdiction over alien corporations in cause arising from out-of-state activities was sufficiently continuous and systematic to satisfy due process concerns where, over period of several years, corporations sold

substantial amounts of their products to customers located in Illinois and sent representatives to Illinois on several occasions to meet with customers).

We also find that, in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois. For these reasons, asserting jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy does not violate federal due process requirements.

We also find that asserting in personam jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy is permissible under the Illinois Constitution. Due process in Illinois requires that "[j]urisdiction is to be asserted only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 Ill.2d 244, 275, 152 Ill.Dec. 384, 565 N.E.2d 1302, 1316 (1990). Through their operation and management of the Power Plant, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have engaged in economic activities which have a substantial effect upon interests located in Illinois. The record demonstrates that Commonwealth Edison and the Illinois residents it serves are dependent upon the electricity the Power Plant generates. In light of these defendants' substantial connections with Illinois, it is "fair, just, and reasonable" to require them to defend these actions in Illinois.

Finally, we conclude that section 2-209(c) does not provide a basis for asserting in personam jurisdiction over either Southern Energy Resources or Southern Energy Trading and Marketing. The record does not reveal any connection between Southern Energy Resources and Illinois other than the fact that some of its employees happen to reside in Illinois. With regard to Southern Energy Trading and

Marketing, the record reveals only sporadic business transactions in Illinois that do not rise to the level of continuous and systematic business contacts. Therefore, to require these two defendants to defend these actions in an Illinois court would not comport with due process principles.

IV. CONCLUSION

For the foregoing reasons, we conclude that the trial court properly asserted in personam jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy. We also conclude, however, that the exercise of in personam jurisdiction over Southern Energy Resources and Southern Energy Trading and Marketing was improper. Accordingly, the rulings of the circuit court are affirmed in part and reversed in part, and this cause is remanded for further proceedings consistent with the views expressed herein.

Affirmed in part and reversed in part; cause remanded.

HARTMAN, P.J., and HOFFMAN, J., concur.

APPENDIX B

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

No. 91722

RICHARD T. ALDERSON, *et al.*,
Respondents,

v.

SOUTHERN COMPANY, *et al.*,
Petitioners.

October 3, 2001

Mr. Michael E. O'Neill
Eichhorn & Eichhorn
200 Russell Street
Hammond, IN 46320

Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

McMorrow, J., took no part.

The mandate of this Court will issue to the Appellate Court on October 25, 2001.

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY
ILLINOIS COUNTY DEPARTMENT
LAW DIVISION

[Filed Aug. 2, 1999]

No. 98 L 9058 B
Consolidated with:
98 L 9216
98 L 9486
98 L 9731
98L 10614

RICHARD T. ALDERSON, *et al.*,
Plaintiff,

v.

SOUTHERN COMPANY, *et al.*,
Defendants.

OPINION & ORDER

This cause coming to be heard on Defendants', Southern Company, Southern Energy, Inc., Southern Energy Resources, Inc., State Line Energy, L.L.C., SEI State Line, Inc., State Line Holding Corp., Southern Energy Trading and Marketing, Inc., Southern Electric International, Inc., and Southern Energy North America, Inc., Motion., to Dismiss pursuant to Section 5/2-209 of the Illinois Code of Civil Procedure for lack in personam jurisdiction, this Court, being fully advised of the premises, having read the briefs of the parties and having heard oral arguments, finds:

IN PERSONAM JURISDICTION

Defendants' Motion to Dismiss for lack of in personam jurisdiction is granted as it pertains to Defendants Southern

Electric International, Inc., and Southern Energy North America, Inc. Defendants' Motion to Dismiss for lack of in personam jurisdiction is denied as it pertains to Defendants Southern Company, Southern Energy, Inc., Southern Energy Resources, Inc., Southern Energy Trading and Marketing, Inc., State Line Energy, L.L.C., State Line Holding Corp., and SEI State Line, Inc

This cause of action arises from injuries Plaintiffs sustained while providing maintenance work for the State Line Generating Station in Hammond, Indiana. On July 28, 1998, plaintiffs were working at the State Line Generating Station when an explosion occurred. Plaintiffs' lawsuit is based upon the alleged negligent maintenance of the State Line Generating Station.

In response to Plaintiffs' complaint, all Defendants (hereinafter "Defendants"), with the exception of Commonwealth Edison, claim that they are not amenable to in personam jurisdiction in the State of Illinois. Plaintiffs, however, assert that Defendants are subject to jurisdiction based on Illinois Long-Arm Statute, Sections 2-209 (a)(1), (a)(3), (a)(7), (b)(4), and (c) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-209.

When jurisdiction over a non-resident is premised upon the Illinois Long-Arm Statute, the Court must apply a two-step analysis to determine whether jurisdiction is proper. First, the Court must determine if Defendants' actions fall under Section 2-209 the Illinois Code of Civil Procedure. 735 ILCS 5/2-209. Second, and only after jurisdiction is found to be proper under the long-arm statute, the Court should determine if the exercise of jurisdiction comports with the due process clauses of the Illinois and United States Constitutions. *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill.2d 304, 311, 489 N.E.2d 1360 (1986).

735 ILCS 5/2-209(a)

Initially, Plaintiffs claim that Defendants are subject to the jurisdiction of this Court because of certain acts committed by Defendants. Specifically, Plaintiffs claim that Defendants should be subject to jurisdiction based upon the following; subsection 2-209(a)(1), Defendants were transacting business in the State of Illinois; subsection 2-209(a)(3), Defendants owned, used, or possessed any property in Illinois; and, subsection 2-209(a)(7), Defendants made or performed any contract or promise substantially connected to this State. However, Section 2-209 (a) also adds a sentence of limitation which states that jurisdiction can be asserted only if the cause of action arises "from the doing of any such acts." 735 ILCS 5/2-209(a). Moreover, Section 2-209(f) reiterates that "only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a)." 735 ILCS 5/2-209(f).

In support, Plaintiffs argue that the purchase of the State Line Generating Station by Defendants from Commonwealth Edison is enough to assert jurisdiction. Plaintiffs offer as evidence numerous trips taken to Illinois and contracts entered into to effectuate the sale of the State Line Generating Station as proof that Defendants were transacting business and entering into contracts; thereby subjecting Defendants to in personam jurisdiction. In addition, Plaintiffs assert that Defendants used property in Illinois to warehouse spare parts; thereby subjecting Defendants to in personam jurisdiction. Lastly, Plaintiffs provide evidence of an easement held by Defendants in which one had to cross over the state line for entrance into the State Line Generating Station as evidence of in Personam jurisdiction based upon subsection 2-209(a)(3).

Upon closer examination, however, Plaintiffs have failed to establish how the cause of action in this case, i.e. negligent maintenance, arose out of the sale of the State Line

Generating Station, ownership of an easement or warehousing spare parts. Therefore, since there is no evidence to establish that any of these acts committed by Defendants gave rise to this cause of action, this Court cannot establish in personam jurisdiction based upon Section 2-209(a), or any of its subsections alleged by Plaintiffs.

735 ILCS 5/2-209(b)(4)

Plaintiffs claim that Defendants are nonetheless subject to in personam jurisdiction under Section 2-209(b)(4) which states that "[a] court may exercise jurisdiction in any action arising within or without this State against any person who . . . is a natural person or corporation *doing business* within this State." 735 ILCS 5/2-209(b)(4) (emphasis added).

In order for an Illinois court to hold the Defendants amenable to in personam jurisdiction, it must apply a more stringent test than the federal government's "minimum contacts" test. *Rollings v. Ellwood*, 141 Ill.2d 244, 565 N.E. 2d 1302, 1315-17 (1990). A defendant generally is doing business in Illinois when he operates in Illinois not occasionally or casually but with a fair measure of permanence and continuity. *Cook Associates, Inc., v. Lexington United Corp.*, 87 Ill.2d 190, 429 N.E.2d 847, 853 (1981). "A finding that a corporation is doing business in Illinois generally requires that the corporation conduct business in Illinois 'of such a character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of Illinois.' *Huck v. Northern Indiana Public Service Co. (NIPSCO II)* 117 Ill. App. 3d 837, 839, 453 N.E.2d 1365, 1368 (1st Dist. 1983) quoting *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill. App. 3d 879, 882, 445 N.E.2d 1303 (1st Dist. 1983).

"Although there may be no such all-inclusive (doing business] test, almost all Illinois cases determining the existence of personal jurisdiction over foreign corporations

have based their findings upon the existence of factors such as offices or sales activities in Illinois." *NIPSCO II*, 117 Ill. App. 3d at 839. These factors are particularly helpful with regard to Defendants Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., who had registered agents in the State of Illinois with offices located in Illinois. In fact, both Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., were served in their respective offices in Illinois. Based on these facts, Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., are subject to in personam jurisdiction.

Next, Plaintiffs assert that Defendants State Line Energy, L.L.C. and SEI State Line, Inc., should be amenable to personal jurisdiction as owners/operators and managers of the State Line Generating Station, respectively. Moreover, SEI State Line, Inc., owned a controlling interest in State Line Energy, L.L.C. State Line Energy, L.L.C. purchased the plant from Commonwealth Edison approximately seven (7) months prior to the explosion. State Line Energy, L.L.C., in addition to other Defendants, took place in numerous negotiations regarding the sale and operation of the plant in Hammond, Indiana. As a result of the negotiations and purchase of the State Line Generating Station from Commonwealth Edison, an agreement was reached that the State Line Generating Station would sell *all* of its power to Commonwealth Edison *only*. This agreement was to last fifteen (15) years. As a result, the only revenue from the safe of energy at the State Line Generating Station was based on its sales to Commonwealth Edison, an Illinois corporation.

Defendants claim that this is insufficient to hold Defendants amenable to in personam jurisdiction. Defendants assert that the instant case is analogous to two Illinois cases, *Stephens v. Northern Indiana Public Service Co. (NIPSCO I)*, 87 Ill.App.3d 961, 409 N. E.2d 423 (5th Dist. 1980), and *Huck*

v. Northern Indiana Public Service Co., (NIPSCO II), 117 Ill.App.3d 837, 453 N. E.2d 1365 (1st Dist. 1983). In both *NIPSCO I* and *NIPSCO II* Illinois courts found that the same energy-producing, non-resident defendant was not subject to in personam jurisdiction. In *NIPSCO I* and *NIPSCO II* the plaintiff attempted to establish in personam jurisdiction based on NIPSCO's contracts with power companies in Illinois. However, unlike the instant case, the Appellate Courts were dealing with a Defendant that had an interconnection agreement between it and a second, unrelated Indiana corporation, Commonwealth Edison Company of Indiana. The Appellate Court in *NIPSCO I* stated that "defendant was not 'doing business' in [Illinois], where from time to time it sold electricity to other power companies through interconnection agreements which were part of a nationwide 'grid' system and conceivably some of the power generated by defendant found its way to customers of other power companies in [Illinois]." *NIPSCO*, 187 III. App. 3d at 970.

The facts of these two cases upon which Defendants rely are clearly distinguishable. In this case, State Line Energy, L.L.C., and SEI State Line, Inc., sold all its electricity *only* to Commonwealth Edison, an Illinois Corporation. State Line Energy, L.L.C., and SEI State Line, Inc., were aware that all of the power generated at the Station was contracted to go to an Illinois corporation, and subsequently to Illinois residents. The Defendant NIPSCO's relationship was much more tenuous than the relationship between Illinois and Defendants State Line Energy, L.L.C. and SEI State Line, Inc.

Therefore, State Line Energy, L.L.C. and SEI State Line, Inc.'s activities with the State of Illinois are sufficiently permanent and continuous to qualify as doing business in Illinois. However, the inquiry does not end there; State Line Energy, L.L.C. and SEI State Line, Inc.'s activities in Illinois must also comport with the due process clauses of the United

States and Illinois Constitutions. For a non-resident defendant to be subject to in personam jurisdiction, that defendant must have sufficient "minimum contacts with the state that jurisdiction will not offend tradition al notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In addition, the defendants in this case must have contacts sufficient enough to give them fair warning that it might be haled into court in that state. *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 474 (1984).

As stated previously, State Line Energy, L.L.C., contracted with Commonwealth Edison, an Illinois Corporation, to sell all of the electricity generated at the State Line Generating Station for fifteen (15) years. State Line Energy L.L.C.'s product, electricity, was continuously exchanging hands on a daily basis. Therefore, it can reasonably be said that defendants State Line Energy L.L.C. and SEI State Line, Inc., as its manager, engaged in "purposeful activity related to the forum that would make the exercise of jurisdiction fair, just or reasonable." *Rush v. Savchuk*, 444 U.S. 320, 329 (1980).

Lastly, the Defendants State Line Energy, L.L.C. and SEI State Line, Inc.'s purposeful activity must also comport with the due process clause of the Illinois Constitution in order for this Court to assert in personam jurisdiction. According to the Illinois Supreme Court, "jurisdiction is to be asserted only when it is fair, just and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of. the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 111.2d 244, 275, 565 N.E.2d 1302, 1316 (1990). Defendants State Line Energy L.L.C. and SEI State Line, Inc.'s acts of selling all of the electricity generated at the State Line Generating Station greatly affect interests located in Illinois. In contracting for the purchase and

distribution of the Station's electricity *solely* with Illinois, it is reasonable to expect defendant State Line Energy L.L.C. and SEI State Line, Inc., to defend an action in Illinois.

Therefore, for these reasons Defendants State Line Energy L.L.C. and SEI State Line, Inc. are amenable to in personam jurisdiction in this Court.

735 ILCS 5/2-209(c)

Lastly, Plaintiffs assert that in personam jurisdiction can be established under Section 2-209(c) of the Illinois Code of Civil Procedure which states that "a court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c). Illinois Courts have interpreted this section of the Long-Arm Statute broadly. *See Ores v. Kennedy*, 218 Ill.App.3d 866, 578 N. E.2d 1139 (1st Dist. 1991) (The amended statute merely provides a means of obtaining jurisdiction over a nonresident defendant to the full extent permitted by the due process clause of the United States Constitution.) As previously stated, both State Line Energy L.L.C. and SEI State Line, Inc., are subject to in personam Jurisdiction. under due process clauses of the Illinois and United States Constitutions. Therefore, in addition to Section 2-209(b)(4), in personam jurisdiction can also be asserted under Section 2-209(c).

Southern Company, Southern Energy, Inc., and State Line Holding Corp. are also subject to in personam jurisdiction based upon the *alter ego* theory set forth in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 445 N.E. 2d 1303 (1st Dist. 1983). To say that the corporate structure of parent company Southern Company and its subsidiaries is complicated is a gross understatement. Southern Company, a holding corporation, is the parent company to Southern Energy, Inc., a wholly owned subsidiary. Southern Energy, Inc., is an "umbrella" company

which owns approximately eight (8) other subsidiaries in their entirety, in addition to partial ownership interests in numerous other subsidiaries. All Defendants in the instant case are Southern Company subsidiaries.

In *Maunder*, one dispositive factor the First District Appellate Court looked at in order to make a decision was the degree of control exercised by the parent company over the wholly owned subsidiary. *Maunder*, 122 Ill.App.3d at 883. In the instant case, it is difficult to ascertain where one corporation ends and another begins. Southern Company is a holding company, without any employees. Southern Energy Inc., directly under Southern Company, conducts the actual business. All Southern Energy Company employees are paid by another corporation, Southern Energy Resource, Inc., which is licensed to do business in Illinois. The corporate structure of these companies is so complex that, on a given day, even an employee is not sure of exactly which company he works for. This is illustrated by the testimony of one employee, Mr. Randall Harrison, who at his deposition had to take a break in order to determine which company he actually worked for; after a phone call he concluded that he was an employee of Southern Energy Resources, Inc. Moreover, it is not uncommon for an executive to hold many high-level positions at multiple corporations in the Southern Company family. For example, Randall Harrison, while vice president of Southern Energy Resources, Inc., and Southern Energy, Inc., acted on behalf of SEI State Line, Inc., and State Line Energy L.L.C., for the purchase of the State Line Generating Station. In addition, Alan Harrelson was a vice president of SEI State Line, Inc., and of State Line Holding Corporation, while also an employee of Southern Energy Resources and Southern Electric International. Also, Marce Fuller was president of SEI State Line, Inc., and vice president of State Line Holding Corporation.

Even the company's letterhead did not separate corporations from each other. The letterhead for State Line Energy, L.L.C., at the top of the page had Southern Company's logo. In addition, Southern Company takes on the role of advertising nationwide for its business. This worldwide promotion also includes advertisement in the State of Illinois.

This Court finds that Southern Company and all of its. subsidiaries, with the exception of Southern Electric International, Inc., and Southern Energy North America, Inc., have organized themselves in such a way as to blur the distinction of separate corporate identities so as to preclude them from asserting that they are separate and distinct corporate identities which prevent the imposition of in personam jurisdiction.

Regarding the two remaining Defendants, Southern Electric International, Inc., and Southern Energy North America, Inc., Plaintiffs have failed to establish sufficient affiliating circumstances to enable this Court to exercise in personam jurisdiction.

ACCORDINGLY, IT IS HEREBY ORDERED:

Defendants' Motion to Dismiss for lack of in personam jurisdiction is granted as it pertains to Defendants Southern Electric International, Inc., and Southern Energy North America, Inc. Defendants' Motion to Dismiss for lack of in personam jurisdiction is denied as it pertains to Defendants Southern Company, Southern Energy, Inc., Southern Energy-Resources, Inc., Southern Energy Trading and Marketing, Inc., State Line Energy L.L.C. State Line Holding Corp., and SEI state Line, Inc.

/s/ William Maddux
Judge, No. 1559

APPENDIX D

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 99-3015

RICHARD T. ALDERSON, *et al.*,
Plaintiffs-Appellees,

vs.

SOUTHERN COMPANY, SOUTHERN ENERGY, INC., SOUTHERN ENERGY RESOURCES, INC., SOUTHERN ENERGY TRADING AND MARKETING, INC., STATE LINE ENERGY, LLC, SEI STATE LINE, INC., AND STATE LINE HOLDING CORP.,
Defendants-Appellants.

Appeal from the Circuit Court
of Cook County, Illinois
County Department, Law Division

No. 98 L 9058
CONSOLIDATED WITH:
98 L 9216
98 L 9486
98 L 9731
98 L 10614

THE HONORABLE WILLIAM D. MADDUX,
JUDGE PRESIDING

REPLY BRIEF OF
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March 1, 2000

* * * * *

II.

THE CIRCUIT COURT'S ORDER VIOLATES DEFENDANTS' CONSTITUTIONAL DUE PROCESS RIGHTS

In *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), the State of Texas asserted personal jurisdiction over a Colombian corporation (Helicol) that had done business in Texas for several years. The basis of the cause of action was a helicopter crash in Peru that killed four American passengers. The helicopter had been purchased by Helicol from Bell Helicopter, a Texas firm, and was being used under contract to transport the American employees of a Texas-based corporation. The Texas Supreme Court asserted "general" jurisdiction over Helicol because of its "numerous and substantial" contacts with the forum. *See, Hall v. Helicopteros Nacionales de Columbia*, 638 S.W.2d 870, 874 (Tex. 1982). The U.S. Supreme Court granted certiorari to decide whether the Supreme Court of Texas had correctly ruled that a foreign corporation's "contacts" with the State of Texas were sufficient to allow a Texas state court to assert

jurisdiction over the corporation "in a cause of action not arising out of or related to the corporation's activities within the State." *Helicopteros*, 466 U.S. at 409.

After reviewing the specific contacts, unrelated to plaintiff's wrongful death tort action, the Supreme Court reversed. *Helicopteros*, *supra*, 466 U.S. at 419. In doing so, the Supreme Court first reiterated the oft-stated due process standards—emphasizing the critical distinction (apparently lost on plaintiffs in this case) between "specific" and "general" jurisdiction:

> The Due Process Clause of the Fourteen Amendment operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant. Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of in personam jurisdiction. Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation.

466 U.S. at 413-14 (citations omitted).[1]

---

[1] The *Helicopteros* court specifically defines and distinguishes the "specific" and "general" jurisdiction concepts in two (2) footnotes. *See*, *Helicopteros*, *supra*, 466 U.S. 408, 414, n. 8 ("specific jurisdiction") and n. 9 ("general jurisdiction") and law journal articles cited therein.

Turning to its due process "minimum contacts" analysis, the Supreme Court noted that like the State Line Energy defendants herein, "[i]t is undisputed that Helicol [the non-resident corporate defendant] does not have a place of business in Texas and never has been licensed to do business in the State." *Id.* at 416. Instead, Helicol's general "contacts" with Texas had consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter in Texas for substantial sums; and sending personnel to Bell's facilities in Fort Worth, Texas for training. 466 U.S. at 416.

Notwithstanding the fact Helicol had negotiated a service contract with plaintiffs' decedents' employer *in Texas*, purchased the helicopters *in Texas* used to conduct its business, and had numerous contacts through visits by its employees *to Texas*, the Supreme Court concluded that assertion of jurisdiction by Texas "in a cause of action not related to those [contacts]," did not comport with the Fourteenth Amendment's Due Process Clause because none of the activities, including the numerous visits to Texas and purchase of Texas goods and services, were sufficiently continuous and systematic to permit assertion of jurisdiction over a tort claim which arose *outside of Texas*. *Id.* at 418. In reaching its conclusion, the *Helicopteros* court turned to *Rosenberg Brothers & Co., Inc. v. Curtis Brown*, 260 U.S. 516 (1923), for the proposition that jurisdiction based upon business visits into the forum "even if occurring at regular intervals," *Id.* at 518, could not satisfy the minimum contacts test "without making a mockery of due process limitations on assertion of personal jurisdiction." 466 U.S. at 418. We could not state the proposition more accurately.

Here, plaintiffs seek to affirm a circuit court's order asserting "general" jurisdiction over the non-resident State

Line Energy defendants for contacts unrelated to the litigation which can only be fairly characterized as sporadic and incidental. While defendants do not contest that State Line Energy has easement rights over an Illinois roadway leading to the Indiana border and State Line Energy's Indiana entrance and likewise acknowledges it temporarily stored spare parts at a ComEd warehouse in Illinois after the sale of the plant was completed, these incidental contacts, unrelated to plaintiffs' premises liability claims, are constitutionally insufficient to base jurisdiction in Illinois. In *Shaffer v. Heitner*, *supra*, the U.S. Supreme Court held that the mere "presence of property" in a State does not establish a sufficient relationship between the owner of the property and the State to support the exercise of jurisdiction in cases "*where the property . . . is completely unrelated to the plaintiff's cause of action.*" *Heitner*, *supra*, 433 U.S. at 209. Here, no one contends the "easement" or "spare parts" are in any way related to the coal dust explosion which allegedly caused plaintiffs' injuries.

The business of the State Line Energy defendants is to generate and sell electricity. The circuit court, contrary to law and fact, based jurisdiction on the incorrect premise that State Line Energy sells its power *in Illinois*. As set out in our opening brief to this court, it does not. Defendant Commonwealth Edison takes title to and then transports the electric power out of Indiana on its own transmission lines (C. 223, 569, 727, 735, 746, 751, 775, 791), and "[s]uch unilateral activity *of another party* . . . is not an appropriate consideration when determining *whether a defendant* has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, *supra*, 466 U.S. at 417 (emphasis added); *see*, *also*, *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) ("The unilateral activity of those [like ComEd] who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State").

Therein lies the critical constitutional error in the circuit court's exercise of jurisdiction over the State Line Energy defendants. State Line Energy simply has no "minimum contacts" or "affiliating circumstances" in Illinois which rise to the constitutionally required level nor are any of the incidental contacts with Illinois recited by plaintiffs "related to the plaintiffs' cause of action." *Heitner*, *supra*, 433 U.S. at 209. To hold otherwise would make "a mockery of due process limitations on assertion of personal jurisdiction." *Helicopteros*, *supra*, 466 U.S. at 418.

The *Helicopteros* opinion rests soundly on the earlier holding in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), wherein the Supreme Court first announced that a defendant must have "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. Critically, the *International Shoe* court explained that the boundaries between "those activities" which justify subjecting a corporation to jurisdiction and those which do not cannot be simply mechanical or quantitative. The test is not "merely . . . whether the activity, which the corporation has seen fit to procure . . . in another state, is a little more or a little less." *Id.* at 319. Instead, the constitutional due process inquiry "must depend rather upon the *quality and nature* of the activity . . . which it was the purpose of the due process clause to insure." *Id.* (emphasis added).

No such due process insurance was allowed State Line Energy here. The circuit court failed to analyze the "quality and nature" of State Line Energy's contacts *in Illinois* in asserting personal jurisdiction over this non-resident. Instead, the court simply discounted the legal significance of *Huck v. Northern Indiana Public Service Co.*, 117 Ill.App.3d 837, 453 N.E.2d 1365 (1st Dist. 1983) and *Stephens v. Northern Indiana Public Service Co.*, 87 Ill.App.3d 961, 409 N.E.2d

423 (5th Dist. 1980) by first quantifying the relevant "contact" (i.e., "[State Line Energy] sold *all* its electricity only to Commonwealth Edison"; Order, A. 6); and then mistaking where this defining contact occurred (i.e., "[State Line Energy's] activities *with the State of Illinois* are sufficiently permanent and continuous to qualify as doing business." Order, A. 7). However, the undisputed facts demonstrate that State Line Energy has not "seen fit to [sell its electricity] in another state," *International Shoe*, *supra*, at 319. Instead, it generates, sells and delivers all of its output of electricity in Indiana. (C. 223, 569, 727, 746, 751, 775, 791). Accordingly, the fact State Line Energy, quantitatively, sells "a little more or a little less," *Id.*, than its total output of electricity to defendant ComEd, in Indiana, is simply not a sufficient basis to insure defendants the due process protection envisioned by the drafters of the U.S. Constitution.

Finally, the Supreme Court's opinion in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) is instructive on the point that "financial benefits" accruing to State Line Energy as a result of its sale (in Indiana) of electricity to an Illinois company (ComEd) do not support jurisdiction in Illinois because the benefits "do not stem from a constitutionally cognizable contact" with Illinois. *World-Wide Volkswagen*, 444 U.S. at 299. This is because, as a matter of constitutional law, a non-resident corporation should "reasonably anticipate being haled into court" in another state only when it "purposefully avails itself of the privilege of conducting business *within the forum*." *Id.* at 297.

In *World-Wide Volkswagen*, the Supreme Court held that because the non-resident corporate defendant closed no sales, performed no services and solicited no business in Oklahoma, there was no *in personam* jurisdiction. *Id.* at 295. The court noted, notwithstanding plaintiffs' "stream of commerce" and

"foreseeability" arguments: "a total absence of *affiliating circumstances* that are a necessary predicate to any exercise of state-court jurisdiction." *Id.*

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States *if its allegedly defective merchandise has there been the source of injury to its owner or to others.*

444 U.S. at 297 (emphasis added).

Here, State Line Energy's product (electricity), while placed into Illinois' stream of commerce by defendant ComEd, was certainly not the "source of injury" to any of the plaintiffs in this case. Rather, plaintiffs were injured as a result of alleged negligence by the owner of the Indiana premises. As important, State Line Energy has not "purposefully availed" itself of the privilege of conducting business "within the forum State" of Illinois. 444 U.S. at 297; *see, also, Hanson v. Denckla, supra*, 357 U.S. at 253. To the contrary, all of the evidence before the circuit court indicates State Line Energy has "purposely availed" itself of the privilege of conducting its business activities wholly within the State of Indiana. Besides the fact the State Line Energy defendants generate, sell and deliver *all* of the electricity in Indiana, all worker's compensation claims, unemployment compensation claims, union affiliations of the workforce and payroll taxes are administered by or through the relevant Indiana Agency. (C. 649, 730). Likewise, although plaintiffs repeatedly state that Chicago Fire Department personnel responded to State Line Energy's Indiana plant on the day of the incident at issue, they do not mention that the Hammond, Indiana Fire Department also responded (through the Indiana gate to the plant that plaintiffs

also never mention) (Dep. of S. Owen, pp. 31, 34, 44; C. 733, 734, 736) and assumed control and jurisdiction over fire-fighting and rescue operations as well as post-accident investigations. (Dep. of S. Owen, pp. 51-52; C. 738). Moreover, the City of Hammond Fire Department and the State of Indiana OSHA organization issued final reports on the cause and origin of the fire and explosion. (C. 738). No Illinois agency investigated or reported on this incident.

Clearly, State Line Energy has "purposely availed" itself to one State only—Indiana. It has none of the "affiliating circumstances" in Illinois, recognized as constitutionally sufficient contacts, such as sales offices, performing of services or solicitation of business. 444 U.S. at 295. Accordingly, under the federal due process cases cited herein, it was a violation of defendants' due process rights for the circuit court to exercise personal jurisdiction in this case. Therefore, this court must reverse the circuit court's decision and remand this case with instructions to dismiss State Line Energy and other non-resident corporate defendants.

Supreme Court, U.S.
FILED
APR 17 2002
OFFICE OF THE CLERK

No. 01-1200

IN THE

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,

Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENT PAUL DANIELSON

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits Illinois courts to assert general personal jurisdiction over corporations which own and operate a power plant sitting in Indiana and abutting the Indiana-Illinois state line, where (a) they have agreed to sell all of the plant's output to an Illinois corporation for ultimate use in Illinois; (b) the plant's operation is governed by a series of contracts, several of which were executed in Illinois and/or contained Illinois choice-of-law provisions, and which required partial performance in Illinois; and (c) there are additional connections between the corporations and the State of Illinois (*e.g.*, advertising in Illinois, possession of an easement over an Illinois road, use of an Illinois sewer system, and attempts to purchase power plants located in Illinois).

PARTIES TO THE PROCEEDINGS

In addition to the parties listed by Petitioners, it should be noted that Commonwealth Edison, an Illinois Corporation ("Commonwealth Edison" or "Com Ed"), was a party to these proceedings and remains a defendant in the underlying lawsuits. The propriety of Illinois' assertion of personal jurisdiction over Commonwealth Edison, however, has not been disputed.

Moreover, the Petition for a Writ of Certiorari has been dismissed as to Respondent David Arcuri, as this Respondent has settled his claim against Petitioners.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statute Involved	1
Statement of the Case	1
Reasons for Denying the Writ	2
I. Petitioners Have Inaccurately Characterized The Illinois Appellate Court's Decision	2
II. The Illinois Appellate Court's Ruling Does Not Conflict With *Helicopteros Nacionales De Colombia v. Hall* Or *Perkins v. Benguet Consolidated Mining Co.*	9
III. This Case Does Not Have Far-Reaching Implications	24
Conclusion	29

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Page

Cases:

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987) 17, 21

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Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 15, 16, 17, 18, 21, 26

Burnham v. Superior Court of California, 495 U.S. 604 (1990) 9

Calder v. Jones, 465 U.S. 783 (1984) 14, 26

Cubbage v. Merchent, 744 F.2d 665 (9th Cir. 1984), *cert. denied*, 470 U.S. 1005 (1985) 27

Ex parte United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 688 So.2d 246 (Ala. 1997), *cert. denied*, 521 U.S. 1118 (1997) 20, 21, 22, 23, 25, 26

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) ..... *passim*

Holt Oil & Gas Corp. v. Harvey, 801 F.2d 773 (5th Cir. 1986), *cert. denied*, 481 U.S. 1015 (1987) .. 27

Cited Authorities

Page

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Kulko v. Superior Court of California, 436 U.S. 84 (1978) 15

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Quill Corp. v. North Dakota, 504 U.S. 298 (1992) .. 26

Wilkerson v. Fortuna Corp., 554 F.2d 745 (5th Cir. 1977), *cert. denied*, 434 U.S. 939 (1977) 28

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United States Constitution:

Fourteenth Amendment ..... i, 1, 10

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Page

Statute:

735 ILCS § 5/2-209 1

Rule:

United States Supreme Court Rule 14.4 9

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STATUTE INVOLVED

In addition to the constitutional provision set forth by Petitioners (the Due Process Clause of the Fourteenth Amendment), this case involves Illinois' "long-arm" statute (735 ILCS § 5/2-209), the relevant portions of which are included in the opinion of the First District of the Appellate Court of Illinois (hereinafter, the "Illinois appellate court" or the "lower court") (Pet. App. A at 15a-16a).

STATEMENT OF THE CASE

The appellate record in these consolidated cases, which deals exclusively with issues of personal jurisdiction, exceeds 1,500 pages in length, yet Petitioners have essentially limited their discussion to a few select facts which favor their position. Petitioners' minimal discussion of the facts falls far short of this Court's requirement and, as discussed further below, warrants the denial of their Petition.

Because the relevant facts are voluminous and are amply set out in the decision of the Illinois appellate court (*see* Pet. App. A at 2a-14a), Respondent refers the Court to the lower court's discussion rather than restating the facts here. Respondent will draw the Court's attention to specific facts where they are pertinent to his argument.

REASONS FOR DENYING THE WRIT

I.

PETITIONERS HAVE INACCURATELY CHARACTERIZED THE ILLINOIS APPELLATE COURT'S DECISION

Petitioners have significantly misrepresented the facts of this case and, accordingly, the Petition should be denied.

A. Petitioners' most blatant mischaracterization relates to the reasons underlying the Illinois appellate court's opinion. While recognizing (in a footnote) that the lower court mentioned other facts in its opinion, Petitioners posit that the court's opinion is based "solely" on the ground that the bulk of the output of the power plant in question was sold to an Illinois corporation. (Pet. at (i), 5 and 10.)

The Illinois appellate court did place great weight on the fact that the entire base output[1] of the State Line Generating Station (the "power plant" or the "plant") was committed to Commonwealth Edison (an Illinois corporation) for consumption in Illinois. As the following excerpt reveals, the court felt that this element of exclusivity was especially important:

> State Line Energy[2] committed to sell the Power Plant's electrical output to Commonwealth

1. The Power Purchase Agreement (one of various agreements defining the relationship between State Line Energy (*see* note 2, *infra*) and Com Ed) provided that the entire "normal operating capacity" (490 megawatts) was committed to Com Ed and that Com Ed retained a right of first refusal as to any power generated beyond 490 megawatts. (*See* Pet. App. A at 4a.)

2. State Line Energy, L.L.C. ("State Line Energy") owned the power plant and its equipment (Pet. App. A at 2a-3a.) After finding

(Cont'd)

> Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison. The contracts establishing this relationship were entered into in Illinois and made subject to Illinois law. As State Line Energy's petition to the IURC[3] reveals, State Line Energy fully realized and anticipated that "most, if not all" of the Power Plant's output would be consumed in Illinois.

(Pet. App. A at 21a.) The court further commented that "State Line Energy has established an essentially exclusive relationship with Commonwealth Edison that, as a practical matter, serves as the basis for its existence" (Pet. App. A at 23a; *see also* Pet App. A at 25a and 33a).

Nonetheless, it is a gross mischaracterization of the lower court's opinion to say, as Petitioners do, that the court relied upon this factor alone. A thorough reading of the opinion reveals that the court considered numerous facts in reaching its conclusion. The court provided a lengthy discussion of the facts, in which it observed the following:

(Cont'd)
that State Line Energy was "doing business" in Illinois for jurisdictional purposes, the court determined that the other four Petitioners were "doing business" through State Line Energy and were also, therefore, subject to personal jurisdiction in Illinois. (Pet. App. A at 20a-21a and 29a-30a.) Petitioners have not asked the Court to review that ruling (Pet. at 13 (n. 8)).

3. State Line Energy had filed a petition with the Indiana Utility Regulatory Commission (IURC), requesting that the IURC refrain from asserting jurisdiction over the power plant's operation. As one reason for this request, State Line Energy asserted that "most, if not all" of the plant's output would be utilized in Illinois. (Pet. App. A at 5a.)

1. The power plant abuts the Indiana-Illinois state line (Pet. App. A at 2a).

2. Many of the agreements between Com Ed and State Line Energy relating to the purchase and subsequent operation of the power plant were executed in Illinois and/or contained Illinois choice-of-law provisions (Pet. App. A at 4a-5a.) The Coal Supply Agreement, under which Com Ed was to supply all of the coal State Line Energy required to satisfy its obligations under the Power Purchase Agreement (*see* n.1, *supra*), additionally designated Illinois as the forum for any actions which might be brought to enforce its provisions (Pet. App. A at 4a).

3. The Training Services Agreement listed State Line Energy's Chicago post office box address and provided that State Line Energy employees were to be trained by Com Ed at an Illinois facility (Pet. App. A at 5a, 12a).

4. Steven Owen, a business unit manager of State Line Energy as well as an Illinois resident, testified that the main entrance to the power plant is "just on" the Indiana side of the state line and that the private road leading to that entrance lies partially in Illinois. Owen understood that State Line Energy possessed an easement over the road to allow access to the main entrance. (Pet. App. A at 10a-11a; *see also* Pet. App. C at 39a (circuit court's opinion).)

5. Owen testified that State Line Energy paid $3,672 per month to store 200 to 225 pallet loads of spare parts at a Com Ed facility in Illinois. State Line Energy paid no taxes on these parts while they were stored in Illinois, but would have to do so once they were moved to Indiana. (Pet. App. A at 11a.)

6. State Line Energy filed a petition requesting that the Indiana Utility Regulatory Commission (IURC) refrain from

asserting jurisdiction over the power plant's operation. In the petition, State Line Energy argued that "most, if not all" of the plant's output would be used in Illinois; that it did not anticipate that any of the plant's output would be sold or used in Indiana; and that Illinois would essentially review State Line Energy's transactions through its regulation of Com Ed (Pet. App. A at 5a-6a).

7. Pursuant to the Consulting Services Agreement, Com Ed performed certain services for State Line Energy in Illinois (Pet. App. A at 5a, 11a). Under the Facilities Agreement, a dedicated telephone line was established between the power plant and Com Ed's Illinois offices (Pet. App. A at 5a).

8. Southern Energy, Inc. ("Southern Energy") had bid on generating stations located in Illinois in 1993 and 1995 (Pet. App. A at 2a, 6a-7a). Petitioners' employees, as well as employees of other "Southern companies" (*see* Pet. App. C at 44a-45a), made several trips to Illinois surrounding the purchase of the power plant in question as well as the attempted purchases of other Illinois power plants. Among these employees were Randall Harrison, a vice president of Southern Energy, and Sheri Marcelene Fuller, senior vice president of Southern Energy and president of SEI State Line, Inc. ("SEI"). (Pet. App. A at 2a, 6a-7a, 9a, 12a).

9. In July, 1998 (the month of the explosion underlying these consolidated cases), State Line Energy sold power to the Illinois Municipal Electric Agency (Pet. App. A at 7a).

10. Southern Company ("Southern") advertised in Illinois and maintained a web site accessible to Illinois residents in order to build name recognition for the Southern companies (Pet. App. A at 2a, 8a).

11. Many of the workers employed at the power plant are Illinois residents (Pet. App. A at 3a).

12. One of the Respondents, Cyril Smotrilla, is an Illinois resident (Pet. at 6; Pet. App. A at 2a.)[4]

13. Alan Harrelson, vice president of SEI and State Line Holding Corporation ("State Line Holding") testified that the explosion underlying these lawsuits resulted in some power outages in Illinois (Pet. App. A at 2a, 7a-8a).

14. The power plant is connected to the Chicago sewer system (Pet. App. A at 11a).

15. The Chicago police and fire departments responded to the explosion in issue (Pet. App. A at 11a).[5]

Petitioners' suggestion that these facts did not enter into the lower court's ruling is untenable. The court plainly stated that "each case requires an independent determination of whether, under *all* of the circumstances, it would be fair to subject a defendant to the jurisdiction of the Illinois courts" (Pet. App. A at 21a [emphasis added]). If the court had

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4. In addition, as Respondent Danielson noted in his Answer to the Petition for Leave to Appeal to the Supreme Court of Illinois (p. 3, n.1), he, too, has been residing in Illinois since this incident. In addition to his own apartment in Illinois, Respondent has spent time in Illinois hospitals and in his parents' Illinois home since he was injured.

5. The Illinois appellate court was also presented with many additional facts which, while not referenced in the opinion, strongly support the court's conclusion. As one compelling example, Steven Owen testified that the plant's daily output was dictated by Com Ed's dispatcher in Illinois (Deposition of Steven K. Owen, beginning at C. 726, pp. 37-41). John Long, a vice president of Com Ed (Pet. App. A at 11a), similarly testified that the plant was "under the control of the Com Ed dispatcher" in Glenbard, Illinois, and that dispatches were made "on an hour-to-hour basis or minute-to-minute basis" (Deposition of John T. Long, beginning at C. 772, pp. 19-20).

determined that the facts recited above were irrelevant, surely it would not have discussed them at such length in its opinion; nor would it have rebuked Petitioners for omitting this information from their appellate brief (Pet. App. A at 14a-15a). Because of the factual complexity of this case, Petitioners' assertion that the lower court based its decision on "one reason alone" (Pet. at 5) constitutes a significant misrepresentation to this Court.

B. Petitioners also characterize the contacts between themselves and Illinois as "unrelated to" Respondents' claims, even going so far as to suggest that the lower court "explicitly acknowledged that respondents' claim is unrelated to petitioners' alleged contacts with Illinois" (Pet. at (i), 2 and 4). In actuality, the court held that the underlying lawsuits did not "arise from" the contracts between Commonwealth Edison and State Line Energy (Pet. App. A at 18a-19a). This Court has recognized that such a distinction may be relevant to the jurisdictional analysis. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (n.10) (1984) (because the respondents conceded that the case did not arise out of *or* relate to the petitioner's contacts with Texas, the Court would not decide one way or the other whether "arising out of" and "related to" describe different scenarios or whether specific jurisdiction[6] would be proper if a cause of action "related

6. "Specific jurisdiction" refers to a forum's exercise of jurisdiction over a defendant when the cause of action "arises out of" or "relates to" the defendant's contacts with the forum. "General jurisdiction" refers to the exercise of jurisdiction when the cause of action does not "arise out of" or "relate to" those contacts. The terms "specific jurisdiction" and "general jurisdiction" were apparently coined by two commentators in the 1960's, but were ultimately adopted by this Court. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 (n. 8, 9) (1984); Juenger, Friedrich K., *The American Law of General Jurisdiction*, (Cont'd)

to" but did not "arise out of" the defendant's contacts with the forum); *see also* 466 U.S. at 420, 424-28 (Brennan, J., dissenting) (arguing that specific jurisdiction is appropriate where the defendant's contacts are "related to" the cause of action, even if the cause of action did not "formally 'arise out of'" such contacts).[7]

In this case, Respondents were injured at a power plant whose operation was governed by a series of contracts executed in Illinois and whose contacts with Illinois were substantial. Even assuming that Respondents' claims did not "arise out of" Petitioners' contacts with Illinois, it is certainly arguable that these claims "related to" those contacts. Thus, once again, Petitioners' misstatement of the lower court's holding is not inconsequential.

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2001 U. Chi. Legal F. 141, 142. Earlier cases (*e.g.*, *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), and *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)) do not use these terms to distinguish between the two scenarios, but in the interest of brevity, Respondent uses the terms in this brief when discussing these cases. As described below, there is some confusion as to the applicability of the "arising out of" and "related to" language.

7. *See also* Twitchell, Mary, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. Chi. Legal F. 171, 190-93 (noting that, in many cases finding that general jurisdiction is appropriate, the dispute is "at least tenuously related to the defendant's forum contacts") and 205-06 (suggesting that the doctrine of specific jurisdiction should perhaps be modified to "permit jurisdiction to be found more easily over a broader scope of 'related' claims"); and Borchers, Patrick J., *The Problem with General Jurisdiction*, 2001 U. Chi. Legal F. 119, 126-27 (noting that the phrases "connected with" and "arising out of" are not "necessarily interchangeable," and demonstrating that it clearly makes a difference which phrase one uses in analyzing jurisdictional questions).

Pursuant to Supreme Court Rule 14.4, these inaccuracies in the Petition, standing alone, provide this Court with a sufficient reason to decline to review this case.

II.

THE ILLINOIS APPELLATE COURT'S RULING DOES NOT CONFLICT WITH *HELICOPTEROS NACIONALES DE COLOMBIA v. HALL* OR *PERKINS v. BENGUET CONSOLIDATED MINING CO.*

Petitioners assert that the Illinois appellate court's holding is at odds with this Court's opinions in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984).[8] However, a careful reading of those cases and of the lower court's opinion in this case reveals no such inconsistency.

The constitutional limits on personal jurisdiction were reconceptualized in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), wherein this Court first set forth the jurisdictional analysis which is used today. In *International Shoe*, the Supreme Court was asked to decide

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8. This Court also upheld "tag" jurisdiction — a type of general jurisdiction — in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990). *See* Juenger, *supra* note 6 at 157-58. In *Burnham*, a divorce case, the Court unanimously upheld jurisdiction based upon service on the defendant while he was present in the state although the lawsuit was "unrelated to his activities in the State" (495 U.S. at 607) and although those activities were minimal. Although *Burnham* is factually distinguishable from this case in several ways, the lower court's decision here is consistent with *Burnham* insofar as the benefits these Petitioners received from their ongoing contacts with Illinois "certainly exceed the thin potential benefits received by the hapless traveler who barely sets foot in the forum's territory." Twitchell, *supra* note 7, at 180-81.

whether a Washington court could exercise jurisdiction over the defendant, a Delaware corporation, consistently with the Due Process Clause of the Fourteenth Amendment. The Court began by stating that

> due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. at 316 [citations omitted]. The Court suggested that a corporate defendant's isolated activities with respect to the forum might be sufficient to subject it to jurisdiction in lawsuits arising from those activities (*i.e.*, specific jurisdiction), and that such a defendant's connections with the forum might also subject it to jurisdiction in lawsuits "arising from dealings entirely distinct from those activities" (*i.e.*, general jurisdiction) when these connections were continuous and substantial. *Id.* at 317-18.

Based on the facts presented to it, the Court ultimately determined that it was proper for the Washington courts to exercise specific jurisdiction over the defendant. *Id.* at 313-14, 320. The Court, however, issued this cautionary statement:

> . . . [T]he criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly

> administration of the laws which it was the purpose of the due process clause to insure.

Id. at 319.

A. *Perkins* was the first general jurisdiction case which the Court decided following *International Shoe*. In *Perkins*, the plaintiff had sued the defendant mining company in Ohio for dividends and other damages she claimed were due to her as a stockholder of the company. *Perkins*, *supra*, 342 U.S. at 438-39. The defendant company was based in the Philippine Islands, but its mining operations there were temporarily halted due to wartime activities; thus, its president conducted parts of the company's business from Ohio for a period of time. *Id.* at 447-48. The plaintiff was not an Ohio resident, and the Court indicated (without explanation) that her claim did not arise out of the defendant's activities in Ohio. *Id.* at 438, 446.[9] The Ohio courts had declined to exercise jurisdiction over the defendant, but this Court concluded that such an exercise of jurisdiction would not offend due process.

The Court first clarified that, although the cause of action did not arise out of the defendant's activities in Ohio, it was proper to apply the guidelines of *International Shoe*. *Perkins*, 342 U.S. at 445-46. The Court also reiterated the principle set out in *International Shoe* that the analysis is largely fact-specific, commenting that "[t]he amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case." *Id.* at 445.

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9. Although the lawsuit did not apparently "arise out of" the defendant's contacts with the forum, "one can now easily imagine an argument that the corporation's Ohio activity (or perhaps more accurately, inactivity) was related to the claims in the case." Borchers, *supra* note 7 at 124.

The Court proceeded to find that jurisdiction was proper, noting, *inter alia*, that the president maintained an office in Ohio where he conducted activities on the defendant company's behalf, such as carrying on business-related correspondence, holding directors' meetings and "supervis[ing] policies" dealing with the rehabilitation of the company's property in the Philippines. The Court also observed that two company secretaries worked in the president's Ohio office with him and that he maintained two Ohio bank accounts carrying "substantial balances of company funds." *Id.* at 447-48. The Court reasoned that these activities amounted to a "continuous and systematic supervision" of the company's limited wartime activities and that, accordingly, an exercise of jurisdiction by the Ohio courts would comport with federal due process. *Id.* at 448.

B. The Court again considered the propriety of general jurisdiction over a corporate defendant in *Helicopteros*. The plaintiff-respondents in *Helicopteros* were individuals who had filed wrongful death actions, premised upon a helicopter crash in Peru, in a Texas court. The lawsuits named three entities as defendants, including the petitioner, Helicopteros Nacionales de Colombia, S.A. ("Helicol"), which owned the helicopter. Helicol was a Colombian corporation which had contracted to provide helicopter transportation for a Peruvian consortium (the alter ego of a joint venture headquartered in Houston, Texas) during the consortium's construction of an oil pipeline in Peru. The plaintiffs' decedents were employed by the consortium and were working on the pipeline at the time of the crash. *Helicopteros*, *supra*, 466 U.S. at 409-10, 412.

The question for this Court in *Helicopteros* was whether Helicol's contacts with the State of Texas were sufficient to render it subject to general jurisdiction there. *Id.* at 409. Initially, the Court reaffirmed the applicability of *International Shoe* and noted that due process is satisfied for purposes of personal jurisdiction where a non-resident corporate defendant has

"certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 414 [quoting from *International Shoe*]. The Court further recognized that, even when (as in the case before it) the claims neither arose out of nor related to the defendant's contacts with the forum, jurisdiction is still proper as long as there are "continuous and systematic" contacts between the defendant and the forum state. *Id.* at 414-16.

Helicol's contacts with Texas consisted of the following: Helicol's chief executive officer made a trip to Houston to negotiate the contract with the consortium; Helicol accepted checks drawn on a Texas bank into its New York and Florida bank accounts; it purchased helicopters, equipment and training services from a Texas manufacturer; and the training services in question took place at the manufacturer's facility in Texas. *Id.* at 410-11.

The Court determined that Helicol's contacts with Texas were insufficient to subject it to general personal jurisdiction there. *Id.* at 415-16. In the Court's view, a single trip to Houston by Helicol's CEO could not be described as a "continuous and systematic" contact. The Court also opined that the issue with respect to the checks was of negligible significance considering that there was no indication that Helicol requested, or even agreed, that the checks be drawn on a Texas bank. *Id.* at 416-17. This left the Court to consider Helicol's purchases from the Texas manufacturer and the related training trips. Having found the other two contacts minimally significant, the Court opined that purchases and related trips, standing alone, were insufficient to justify an assertion of jurisdiction. *Id.* at 417.

In reaching its conclusion, the *Helicopteros* Court gave some indication of the types of contacts which might have

justified a different outcome. To wit, the Court noted that the petitioner had never sold any product that reached Texas; had never signed any contract in Texas; had never solicited business in Texas; had never owned real or personal property in Texas; and had never maintained an office or establishment there. Additionally, none of the respondents (plaintiffs in the underlying suits) were domiciled in Texas.[10] *Id.* at 411-12. The Court also noted that the petitioner's contract with the consortium, although negotiated in Texas, was signed in Peru and provided that any controversies arising from the contract would be submitted to the jurisdiction of the Peruvian courts. *Id.* at 410-11.

C. Petitioners' argument that the lower court's finding in the present case contravenes *Perkins* and *Helicopteros* is misguided. The contacts between the defendant in *Perkins* and the forum state (Ohio) were quite substantial; in fact, this Court later noted that, in *Perkins*, Ohio was essentially the corporation's principal place of business. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (n.11) (1984). However, the *Perkins* Court in no way indicated that contacts of such great magnitude were required as some sort of necessary minimum in order to justify an exercise of general jurisdiction. To the contrary, the *Perkins* Court recognized that the amount and kind of activities which will suffice to justify an exercise of jurisdiction "are to be determined in each case." *Perkins*, 342 U.S. at 445. This is a principle the

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10. The Court noted, however, that when jurisdiction is otherwise proper, a plaintiff's *lack* of residential or other contacts with the forum *will not defeat* jurisdiction. 466 U.S. at 412 (n.5). The Court cited *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); and *Calder v. Jones*, 465 U.S. 783 (1984), in support. *Keeton* and *Calder* established that, while a plaintiff need not have any contacts with the forum in order to uphold an assertion of jurisdiction, a plaintiff's contacts "may be so manifold as to permit jurisdiction when it would not exist in their absence." *Calder*, 465 U.S. at 788; *Keeton*, 465 U.S. at 779-80.

Court has reinforced on several occasions. *See, e.g., Kulko v. Superior Court of California*, 436 U.S. 84, 92 (1978); and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485-86 (1985).

In this case, the lower court took all of the facts into consideration and ultimately determined that the *International Shoe* standard was satisfied (Pet. App. A at 31a-35a). The contacts in this case may not "resemble" those present in *Perkins* (Pet. at 12), but that does not mean that they are any less continuous or systematic. The determination of whether the *International Shoe* standard is met in a given case "is one in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.'" *Kulko, supra*, 436 U.S. at 92 [citation omitted]. The Illinois appellate court's opinion in this case is well-supported by the facts and is fully consistent with *Perkins*.

Petitioners' argument that the lower court's ruling here is "irreconcilable" with *Helicopteros* (Pet. at 12) is also faulty, as it rests on a selective reading of both the *Helicopteros* decision and the evidence in this case. Petitioners fail to point out that, in *Helicopteros*, the petitioner never sold any product that reached the forum, never signed any contract in the forum and never owned property in the forum. In the present case, Petitioners unquestionably sold electricity which reached Illinois; in fact, practically speaking, all of the power plant's output was sold to an Illinois corporation and was used in Illinois. Petitioners also stored personal property in Illinois and possessed an easement over an Illinois road which provided exclusive access to the plant's main entrance. Perhaps most significantly, Petitioners entered into several contracts in Illinois, many of which contained Illinois choice-of-law provisions.[11]

11. In considering whether a defendant has purposefully invoked the protections and benefits of a state's law for jurisdictional purposes, contractual choice-of-law provisions may and should be (Cont'd)

These compelling facts, especially when considered in conjunction with the other facts discussed above (*see* Section I., subsection A., *supra*), completely refute Petitioners' contention that the contacts in this case are "less significant" than those which existed in *Helicopteros* (Pet. at 13). To the contrary, Petitioners' contacts with Illinois are far more substantial than the *Helicopteros* petitioner's contacts with the State of Texas, and the lower court's decision to uphold the exercise of jurisdiction in this case was entirely warranted.

D. Three fairly recent cases in which this Court denied certiorari further demonstrate the soundness of the Illinois appellate court's decision.

1. In *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.* ("*Met Life*"), 84 F.3d 560 (2d Cir. 1996), *cert. denied*, 519 U.S. 1006, 1007 (1996), the plaintiff was a New York corporation with its principal place of business in New York, and the defendant was a Delaware corporation with its principal place of business in Pennsylvania. The focus of the lawsuit was an office building in Florida. The plaintiff sued the defendant in Vermont. *Met Life*, 84 F.3d at 564-65. It was undisputed that the lawsuit did not arise out of any contacts between the defendant and Vermont; therefore, the plaintiff's argument in support of personal jurisdiction was confined to the theory of general jurisdiction. *Id.* at 565.

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considered in conjunction with other indicators of the defendant's "deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there." *Burger King*, *supra*, 471 U.S. at 481-82. The *Burger King* Court opined that the defendant's establishment of a 20-year interdependent relationship with the plaintiff's headquarters in the forum state was such an indicator. The *Burger King* decision thus bolsters the Illinois appellate court's reliance on Petitioners' establishment of a 15-year interdependent relationship with Commonwealth Edison of Illinois.

Summarizing applicable Supreme Court precedent, the *Met Life* court explained that the due process test for personal jurisdiction has two related components. First, the court must determine whether the defendant has sufficient contacts with the forum state to justify the exercise of jurisdiction. This prong of the test distinguishes between specific and general jurisdiction: "Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test, requiring the plaintiff to demonstrate the defendant's 'continuous and systematic general business contacts.'" *Id.* at 567-68 [citing *Helicopteros*]. The court emphasized that the minimum contacts analysis is "fact-intensive." *Id.* at 569, 570. The court additionally stressed that a defendant's contacts with the forum should not be examined piecemeal, but as a whole. *Id.* at 570-71.

Next, the court must ask whether the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice" — *i.e.*, whether jurisdiction is reasonable under the circumstances of the case. The *Met Life* court observed that

> [t]he Supreme Court has held that the court must evaluate the following factors as part of this "reasonableness" analysis: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Id. at 568 [citing *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113-14 (1987); *Burger King*, *supra*, 471 U.S.

at 476-77; and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)]. The court made a point of noting that it saw no basis for distinguishing between general and specific jurisdiction cases for purposes of this prong of the analysis. 84 F.3d at 573. The court further recognized that, while a defendant could defeat jurisdiction by presenting a compelling case as to the second prong of the test, "the exercise of jurisdiction is favored where the plaintiff has made a threshold showing of minimum contacts at the first stage of the inquiry." *Id.* at 568 [citing *Burger King*, 471 U.S. at 477], 575.

Turning to the facts of the case before it, the *Met Life* court observed that "[m]any cases, including this one, fall between *Perkins* and *Helicopteros*." *Id.* at 571. Despite the fact that the defendant owned no property in Vermont, the court concluded that "the contacts it did have with the state were more than sporadic or occasional." *Id.* at 573. The court elaborated as follows:

> While [defendant] Robertson's $4 million dollars in sales in Vermont between 1987 and 1993, standing alone, may not have been sufficient, its relationship with dealers selling its products and its so-called "authorized" builders, the visits to those dealers and builders by Robertson personnel, the advertising and support available to Vermont residents regarding Robertson's products, and the deliberate targeting of Vermont architectural firms as sales prospects, tips the balance in [plaintiff] Met Life's favor and leads us to conclude that it satisfied the "minimum contacts" requirement of the due process test.

Id. at 573. The court proceeded to find, however, that this was one of those exceptional cases in which the propriety of

general jurisdiction was overcome by the reasonableness prong of the test. *Id.* at 573, 575. In the court's opinion, two factors in particular weighed heavily against the exercise of jurisdiction. These were (a) the fact that the dispute implicated "absolutely no interest" of the State of Vermont, because the acts and omissions alleged in the lawsuit took place in distant states (Texas, Missouri and Florida); and (b) no witness or other evidence was located in Vermont. *Id.* at 574-75.

Met Life supports the lower court's finding of minimum contacts in the present case. In 1998 alone, Petitioners in this case earned approximately $25 million in sales from the State Line Generating Station (Pet. at 13-14), the large majority (if not all) of which were sales to Commonwealth Edison of Illinois. This fact, when considered in conjunction with the other contacts enumerated above, easily "tips the balance" in Respondents' favor with regard to the "minimum contacts" requirement.

In contrast to *Met Life*, however, the second prong of the test is also satisfied here. Illinois has an interest in the safety of the power plant (and concomitantly has an interest in this lawsuit) because Respondent Smotrilla, like many other individuals employed at the plant, is an Illinois resident.[12] As the circuit court reasoned, the fact that all of the plant's electricity is distributed to Illinois residents also means that Illinois interests are "greatly affect[ed]" and merits the conclusion that it is reasonable to expect Petitioners to defend an action in Illinois (Pet. App. C at 43a-44a).

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12. As noted above, Respondent Danielson now resides in Illinois as well; however, because this fact was not included in the Illinois appellate court's opinion, Respondent mentions it here only in passing.

Additionally, it is clear that some of the necessary witnesses will be found in Illinois, including Steven Owen (a business unit manager of State Line Energy who resides in Illinois) and those members of the Chicago police and fire departments who reported to the plant following the explosion. While some witnesses will almost surely be located in Indiana, this fact does not defeat the propriety of jurisdiction under the circumstances present here. In *Met Life*, the plaintiffs filed suit hundreds of miles away from the site of the incident in question. Here, although Respondents were injured in Indiana (Petitioners' proposed forum), the power plant where the incident took place literally abuts the Indiana-Illinois state line. Petitioners cannot seriously argue that an Illinois trial would be burdensome while an Indiana trial would not. Thus, in light of *Met Life*, Illinois' exercise of jurisdiction over Petitioners is entirely reasonable.

2. *Ex parte United Brotherhood of Carpenters and Joiners of America, AFL-CIO* ("*United Brotherhood*"), 688 So.2d 246 (Ala. 1997), *cert. denied*, 521 U.S. 1118 (1997), also supports the result in this case. In *United Brotherhood*, the Alabama Supreme Court held that it was proper for Alabama to exercise general jurisdiction over the United Brotherhood of Carpenters (the "UBC" or the "union"). The union was named as one of several defendants in a lawsuit brought by BE&K Construction Company ("BEK" or the "construction company"), a non-union contractor headquartered in Alabama. BEK alleged that the defendants wrongfully attempted to prevent the construction company from performing labor contracts at two jobsites in Minnesota and Oregon. The Minnesota jobsite was the primary focus of the lawsuit. 688 So.2d at 247-48. The UBC was based in Washington, D.C. *Id.* at 247. The UBC maintained no offices, bank accounts or property in Alabama, and only 0.5% of its members resided in Alabama. *Id.* at 252.

Like the court in *Met Life*, the *United Brotherhood* court first explained that the *International Shoe* test requires a stronger showing of contacts when general jurisdiction is involved — namely, the plaintiff must show that the defendant's contacts with the forum have been "continuous and systematic." *Id.* at 250 [citing *Perkins* and *Helicopteros*]. If the defendant's contacts are sufficient, the court must then assess whether the exercise of jurisdiction would comport with considerations of fair play and substantial justice. *Id.* [citing *World-Wide Volkswagen* and *Asahi*].

The court recognized that the case before it was unique in that the union was an unincorporated, nonprofit entity whose purpose was to promote the pro-labor goals of its members, rather than to avail itself of the privileges of doing business with Alabama residents. *Id.* at 252. The union asserted that an exercise of general jurisdiction was improper based upon its nonprofit status, the fact that it owned no property in Alabama and the fact that only a small percentage of its members resided there. The court, however, disagreed. The court's decision rested in part on the fact that the union's collection of dues from its Alabama members, while not for profit, was nonetheless systematic and continuous. Another consideration the court deemed relevant was the fact that the UBC "consistently directed and/or supported pro-union activities at Alabama jobsites." *Id.* Finally, the court reasoned that, although the Alabama members of the union constituted only a small percentage of the overall organization, they did maintain a continuous relationship with the UBC in attempting to further their pro-union goals. *Id.*

The court next applied the *Burger King* factors and determined that the second prong of the test was also satisfied — *i.e.*, that jurisdiction was reasonable. *Id.* For this portion of the analysis, the court referred to its discussion of a separate defendant's objections to a *forum non conveniens* ruling in the lower court. *Id.* at 249-50, 252. "Of paramount

importance" to the court in this regard was Alabama's "compelling interest" in the litigation by virtue of the fact that BEK was an Alabama corporation which employed Alabama citizens and paid taxes in the state. *Id.* at 249. The court reasoned that, because the *forum non conveniens* factors were not compelling enough to overcome the plaintiff's choice of forum, it logically followed that "traditional notions of fair play and substantial justice would not be violated if the UBC [was] required to submit to the jurisdiction of an Alabama court." *Id.* at 252. As such, the lower court's exercise of general jurisdiction was upheld.

Much like the *United Brotherhood* defendant continuously and systematically collected dues from Alabama residents, Petitioners herein are continuously and systematically engaged in the sale of energy to Com Ed of Illinois. As the circuit court put it, "State Line Energy L.L.C.'s product, electricity, was continuously exchanging hands on a daily basis" (Pet. App. C at 43a). In addition, the operation of the power plant was "directed at" Illinois, not only because its output was sold exclusively to an Illinois corporation, but because it was actually used (with Petitioners' knowledge) by Illinois residents and because many Illinois residents worked at the plant. Under these circumstances, the fact that Petitioners' revenues from the plant may have constituted a small percentage of their overall revenues is of little significance. The facts conclusively show that Petitioners maintain a continuous relationship with Illinois and its residents, and as a result, jurisdiction is appropriate.

Moreover, the second prong of the test is satisfied here for the reasons set forth above. The State of Illinois has a compelling interest in this litigation, and Petitioners cannot demonstrate that Illinois — Respondents' forum of choice — is an overly burdensome forum for them. Indeed, this case presents a stronger argument for the exercise of jurisdiction than did the scenario in *United Brotherhood*, for an Illinois trial will not invoke "the judicial inefficiency of attempting to litigate this lawsuit

thousands of miles from its focal point." 688 So.2d at 256 (Butts, J., dissenting). The explosion in question took place at the State Line Generating Station which, as its name suggests, actually abuts the Indiana-Illinois state line.

3. In *Buddensick v. Stateline Hotel, Inc.*, 972 P.2d 928 (Utah. App. 1998), *cert. denied*, 982 P.2d 88 (Utah 1999), *cert. denied*, 528 U.S. 928 (1999), as in the instant case, the plaintiff was injured at the defendant's state-line facility (a casino, restaurant and hotel sitting in Nevada near the Nevada-Utah border). Although the defendant's facility was located in Nevada, the plaintiff brought her lawsuit in Utah. The court concluded that Utah could permissibly assert general jurisdiction over the defendant where, *inter alia*, the defendant advertised in Utah, leased Utah property directly adjacent to its facility; contracted for goods and services in Utah; and maintained two post office boxes in Utah. *Buddensick*, 972 P.2d at 929-30. The court opined that, under these circumstances, the defendant reasonably should have foreseen the possibility of having to defend itself there. As a result, it was not unreasonable to for the defendant to be "hauled into court" in Utah. *Id.* at 931 [citing *World-Wide Volkswagen*]. The similarities between *Buddensick* and the instant case are readily apparent.

The Illinois appellate court's opinion in this case is fully consistent with the precedent established in *Perkins* and *Helicopteros*. It is also consistent with cases such as *Met Life*, *United Brotherhood* and *Buddensick*, which this Court has declined to review. Accordingly, the Petition should be denied.

III.

THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS

Petitioners cite a litany of cases in an attempt to demonstrate that the state and lower federal courts are "deeply divided" on the issue of general personal jurisdiction (Pet. at 15-24). Petitioners also contend that the present case is a prime candidate for this Court's review because it presents the issue of the permissible scope of general jurisdiction "without factual complexity" (Pet. at 5). Once again, however, Petitioners' arguments are misguided.

A. Simply stated, the courts have reached different conclusions regarding the propriety of general personal jurisdiction because they have considered a broad range of fact patterns. As such, those courts which have found general jurisdiction appropriate are not necessarily in discord with the courts which have reached an opposite conclusion.

1. As an example, Petitioners submit that some courts "have ruled that even substantial sales accompanied by a physical presence by the defendant are insufficient to permit the assertion of general jurisdiction" and that the views of such tribunals are "at the furthest remove from the Illinois courts." (Pet. at 17-18.) Petitioners cite *Hughes v. A.H. Robins Co.*, 490 A.2d 1140 (D.C. 1985), as such a case, pointing out that general jurisdiction was deemed inappropriate therein even though the defendant maintained an office in the forum and made $3 million in sales there. (Pet. at 18.) Notably, however, Petitioners neglect to mention the *Hughes* court's repeated references to the fact that the defendants had never negotiated any contracts in the forum. 490 A.2d at 1143, 1146 (n.4), 1148. Petitioners also fail to note that *Hughes* involved only one plaintiff, who was not a forum resident, and that the cause of action had "nothing to do with the forum." *Id.* at 1143, 1147, 1151.

In light of these facts, *Hughes* is entirely consistent with the Illinois appellate court's decision. Here, for the reasons discussed above, Illinois has a strong interest in this litigation. In addition, the revenues Petitioners generated by selling the power plant's output to Commonwealth Edison of Illinois (approximately $25 million in 1998) greatly exceed the revenues earned from sales in the forum by the *Hughes* defendant (approximately $3 million in one year (*Id.* at 1143, 1150)). Perhaps most important is the fact that Petitioners negotiated various contracts in Illinois and agreed that Illinois law would govern them. Under these circumstances, the fact that Petitioners did not maintain an office in Illinois does not render jurisdiction unreasonable. The *Hughes* court recognized that the weight accorded to a defendant's contacts "varies greatly with the circumstances of each case." *Id.* at 1146. The *Hughes* court did not act unreasonably in ruling against the exercise of jurisdiction. Just the same, in the scenario present here, the Illinois appellate court was correct in upholding the exercise of jurisdiction.

2. Petitioners contend that, at the other end of the spectrum, some tribunals have taken the same "extreme position" as the Illinois courts (Pet. at 19), upholding jurisdiction "just because the defendant made significant sales to customers from the forum state" and/or because the defendant's contacts with the forum were "deliberate rather than fortuitous" (Pet. at 20-21). As an example, Petitioners cite *United Brotherhood*, *supra*. Petitioners' interpretation of *United Brotherhood*, however, is flawed. As set forth above, that court ruled as it did for several reasons, primarily because the defendant's contacts with the forum were unquestionably "continuous and systematic" and because the forum had a "compelling interest" in the subject matter of the litigation. Clearly, such issues are proper for a court to consider when analyzing the propriety of jurisdiction; in fact, the phrase "continuous and systematic" comes directly from

this Court's opinions in *Perkins* and *Helicopteros*. *See Perkins*, 342 U.S. at 445, 448; and *Helicopteros*, 466 U.S. at 415-16. The Illinois appellate court used identical language (Pet. App. A at 33a) and also placed weight on the State's interest in the subject of the litigation (Pet. App. A at 34a). This is not an "extreme" approach to the jurisdictional analysis. To the contrary, it is entirely in accord with this Court's precedent.

3. Petitioners' suggestion that some courts have "unjustifiabl[y]" used specific jurisdiction concepts in analyzing questions of general jurisdiction (Pet. at 23) is equally unavailing. A stronger showing must be made in the case of general jurisdiction; nonetheless, it is well-established that the same basic test (*i.e.*, the *International Shoe* test) applies to general and specific jurisdiction scenarios alike. Accordingly, this Court itself has intermingled these concepts to a certain extent. For example, in *Helicopteros*, this Court cited to *Keeton* and *Calder* — both specific jurisdiction cases. 466 U.S. at 412 (n.5). Conversely, in *Keeton*, the Court cited to *Perkins* (465 U.S. at 779), and in *Burger King* (a specific jurisdiction case), the Court drew upon its opinion in *Helicopteros* (471 U.S. at 475). *See also Quill Corp. v. North Dakota*, 504 U.S. 298, 307-08 (1992) (reinforcing that "*all* assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny" and that, pursuant to these principles, a corporate defendant which purposefully avails itself of the benefits of an economic market in the forum state may subject itself to personal jurisdiction in the state even if it has no physical presence there [emphasis added, citations omitted]).

The notion that specific and general jurisdiction are closely-related concepts can also be gleaned from cases in which this Court has denied certiorari. For instance, as the above discussion demonstrates, both the *Met Life* and *United Brotherhood* courts relied rather extensively on specific

jurisdiction opinions. *See also Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 779 (n. 5) (5th Cir. 1986), *cert. denied*, 481 U.S. 1015 (1987) (stating that, "[w]hile the distinction between 'general' and 'specific' jurisdiction provides an [sic] useful analytic device, the use of these categories does not alter the fundamental focus of the minimum contacts inquiry").[13]

As such, courts which rely in part on specific jurisdiction decisions in ruling on questions of general jurisdiction — including the Illinois appellate court — are not acting under any "misconception" (Pet. at 23). To the contrary, their logic is in full compliance with precedent.

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13. Petitioners contend that the "great expansion" of the permissible scope of specific jurisdiction is a reason to avoid expanding general jurisdiction (Pet. at 23). However, some commentators have cogently argued that the opposite is true. *See* note 7, *supra*. As Professor Borchers put it, general jurisdiction sometimes serves as a "safety valve" that allows access to a reasonable forum when the "restrictive" test for specific jurisdiction would deny it. Borchers, *supra* note 7 at 138-39. Interestingly, some courts which have ruled against general jurisdiction have essentially reached the same end result by taking a more expansive view of specific jurisdiction. For example, in *Cubbage v. Merchent*, 744 F.2d 665 (9th Cir. 1984), *cert. denied*, 470 U.S. 1005 (1985), a medical malpractice case, the court ruled out general jurisdiction (744 F.2d at 667-68), but went on to find that specific jurisdiction was appropriate. In the court's opinion, the plaintiff's claim "arose out of or resulted from" the defendant's advertising in the forum state (California) and participation in a health care program there. *Id.* at 670. Notably absent from the opinion, however, was any suggestion that the plaintiff sought treatment with the defendants in response their advertising in California or their participation in the aforementioned health care program. The court apparently found it sufficient that the plaintiff was a California resident and that the defendants' connections with the state enabled them to attract and earn revenues from California residents. *Id.* at 670, 672.

B. Petitioners submit that this case presents the question of the permissible scope of general jurisdiction "clearly" and "without factual complexity" because the lower court based its decision on "one reason alone." (Pet. at 4-5.) This contention is amply refuted by the discussion in Section I, subsection A, *supra*. The lower court relied on an abundance of facts, explicitly stating that "the record on appeal [was] long and the facts [were] complex" (Pet. App. A at 15a). As a result, this case is no more "well suited for this Court's review" than other "multi-factor" cases which, as Petitioners concede, are "unlikely to provide clear guidance for future cases in which a different combination of factors is present" (Pet. at 5).

Because the circumstances of each case are key in determining the propriety of jurisdiction, this case has no far-reaching implications. Its facts are not only complex; they are also unique. Take, for instance, the power plant's proximity to a state line. This issue raises special considerations which will not apply in all cases. *See Wilkerson v. Fortuna Corp.*, 554 F.2d 745, 746, 748 (5th Cir. 1977), *cert. denied*, 434 U.S. 939 (1977) (finding that the defendant race track's contacts with Texas were substantial and continuous, and noting that the race track's location "just across the [New Mexico-Texas] state line" played an important part in supporting jurisdiction in Texas).

Even among cases involving "border-state" defendants, this case differs from many others in that the electricity sold by Petitioners can be, and indisputably is, carried into Illinois and used there by Illinois residents. One commentator has noted that, in many "border-state" cases, jurisdiction is potentially problematic because the defendants — entities such as taverns, resorts and hospitals — are not engaged in the sale of goods which can be carried into the forum state. Mills, Robert T., *Personal Jurisdiction over Border State*

Defendants: What does Due Process Require?, 13 S.Ill.U. L.J. 919, 921 (1989). In this way, the instant case presents an argument for jurisdiction that is rarely available to plaintiffs in "border-state" cases, and a determination as to the propriety of jurisdiction here will not necessarily be useful in analyzing other cases, even when those cases involve "border state" defendants. For this reason and those discussed above, this case has no far-reaching implications and is not a good candidate for this Court's review.

CONCLUSION

For all of the foregoing reasons, Respondent Paul Danielson respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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No. 01-1200

In The

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,

Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

BRIEF IN OPPOSITION FOR RESPONDENTS RICHARD T. ALDERSON, ROBERT A. KALLOK, AND CYRIL SMOTRILLA

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QUESTION PRESENTED

Whether the Illinois appellate court below erred in its holding, based on "many . . . factors," that petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

A. The Petitioners' Efforts to Buy Electrical Power Plants in Illinois or Otherwise Supply the Illinois Electricity Market 2

B. The Petitioners' Reliance on Illinois Property, Illinois Law, the Illinois Courts, and Other Illinois Governmental Services 3

C. The Petitioners' Objections to Personal Jurisdiction, and the Decisions Below 5

REASONS FOR DENYING THE WRIT 7

I. THIS CASE DOES NOT PRESENT THE QUESTION STATED IN THE PETITION, AND THERE IS NO REASON TO DOUBT THE CORRECTNESS OF THE JUDGMENT BELOW 7

II. CONSIDERATION OF THE ACTUAL FACTS OF RECORD DEMONSTRATE THAT THERE IS NOTHING CONTROVERSIAL ABOUT ILLINOIS' TAKING JURISDICTION IN THIS CASE 11

A. The Conduct of the Petitioners Amounted to a Joint Undertaking or Even De Facto Partnership in Connection with the Operation of this Power Plant 11

B. The Sole Function of the Petitioners' Undertakings with Commonwealth Edison was to Deliver Electricity to Illinois 12

TABLE OF CONTENTS – Continued

Page

C. Petitioners Specifically, Explicitly and Repeatedly Sought Protection of Illinois Law 13

D. The Output of the Power Plant was Directly Controlled from a Facility Inside Illinois..... 16

E. Petitioners Omit Almost All Relevant Facts from Their Petition..... 17

F. The Case for Personal Jurisdiction is Overwhelming 17

G. The Illinois Court Applied Section 2-209 of the Illinois Code, *see* 735 ILCS 5/2-209(b)(4) (West 1998), in a Narrow, Careful and Prudential Way..... 18

H. There is Nothing Unusual in this Case Other than the Strength of the Facts Supporting Jurisdiction 20

III. NOTHING IN THE BODY OF THE PETITION MERITS A GRANT OF PLENARY REVIEW.. 20

IV. THAT THERE IS PERSONAL JURISDICTION OVER PETITIONERS IS INDISPUTABLY CORRECT, AND THERE IS NO CASE THAT PETITIONERS CITE THAT IS INCONSISTENT WITH THE DECISION OF THE ILLINOIS APPELLATE COURT 25

V. THE RECORD CLEARLY SHOWS THAT DUE PROCESS REQUIREMENTS HAVE BEEN SATISFIED IN THIS CASE 27

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES:

Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 94 L. Ed. 2d 92, 107 S. Ct. 1026 (1987) 28

Allerion, Inc. v. Nueva Icacos, S.A., 283 Ill.App.3d 40, 669 N.E.2d 1158 (1996) 27

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 18, 28, 29

Flint v. Court Appointed Special Advocates of Du Page County, Inc., 285 Ill.App.3d 152 674 N.E.2d 831 (1996) 27

Hanson v. Denckla, 357 U.S. 235 (1958) 18

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) 6, 7, 20, 22, 23

International Shoe Co. v. Washington, 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154 (1945) 28

Kalata v. Healy, 312 Ill.App.3d 761, 728 N.E.2d 648 (2000) 28, 29

Milliken v. Meyer, 311 U.S. 457, 85 L. Ed. 278, 61 S. Ct. 339 (1940) 28

National Gas Pipeline Co. v. Mobil Rocky Mountain, Inc., 155 Ill.App.3d 841, 508 N.E.2d 211 (1986) 9

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) 20

Republic of Argentina v. Weltover, 504 U.S. 607 (1993) 18

Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd., 230 Ill.App.3d 308, 594 N.E.2d 1190 (1992) 9

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND RULES:

735 ILCS 5/2-209(b)(4) 8, 18

Supreme Court Rule 14.1(g) 1

MISCELLANEOUS:

Mary Twitchell, Why We Keep Doing Business With Doing-Business Jurisdiction, 2001 U. Chi. Legal Forum 171 (2001) 24

Mary Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610 (1988) 24

BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents, Richard T. Alderson, Robert A. Kallok and Cyril Smotrilla (hereinafter referred to as the "respondents"), respectfully pray that the Petition for Writ of Certiorari sought in this matter by "petitioners," Southern Company, Southern Energy, Inc., SEI State Line, Inc., State Line Holding Corporation, and State Line Energy, L.L.C., be denied.

Applying well-settled law to a 1500-page record, the appellate court below held that petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a. Contrary to the assertion that this holding was based on "one reason alone" (petitioners' sales to an Illinois firm), Pet. 5, in the very next sentence the court stated that it based its "conclusion on many . . . factors," as summarized earlier in its decision. Pet. App. 33a.

Petitioners' effort to present this case "starkly and without factual complexity," Pet. 5, does not match the reality of the case. All that is before this Court is an application of well-settled law to the facts of a somewhat unusual case involving related corporate entities which situated a business along a state line and then "cherry picked" from the property law, courts and other governmental services of the two states as they saw fit in running their business. This case is not an appropriate vehicle for further explication of the law of general jurisdiction, even if such explication were needed, which is hardly clear. Certiorari should be denied.

STATEMENT OF THE CASE

Contrary to Rule 14.1(g), the petition fails to discuss many of the facts material to the question presented, replicating the "grossly inadequate" statement below, Pet. App. 15a – sufficient reason to deny the petition. This statement of the case is crafted so as to both demonstrate the Rule 14.1(g) violation and provide this Court with the record summary needed to evaluate the petition even if the rule violation were to be overlooked.

A. The Petitioners' Efforts to Buy Electrical Power Plants in Illinois or Otherwise Supply the Illinois Electricity Market

Southern Company and its four wholly owned subsidiaries which appear as petitioners are engaged in the nationwide production of electricity, among other activities in the public utility industry. Pet. App. 3a, 8a.[1]

During the 1990s, the petitioners actively sought to purchase power-generating facilities in or adjacent to Illinois to serve the Illinois market. C.694; Fuller Dep. at 17.[2] For example, in 1993 and 1994 the petitioners made an unsuccessful bid to purchase the Fisk facility in Chicago from Commonwealth Edison (headquartered in Illinois). Pet. App. 6a; C.583, Harrison Dep. at 70; C.695, C.703, Fuller Dep. at 18, 51; C.783-85, Long Dep. at 54-55. In 1995, they made an unsuccessful bid to purchase the Kincaid facility from Commonwealth Edison, also located in Illinois. Pet. App. 6a-7a; C.582-83, Harrison Dep. at 65-69; C.695, Fuller Dep. at 18. In 1996, the petitioners were successful in purchasing from Commonwealth Edison the State Line Generating Station at issue in this case. That facility is located not in Illinois, but just over the border in Hammond, Indiana, close to Chicago. Pet. App. 4a-5a.

On several occasions during negotiations over these three facilities, employees of the Southern entities met with Commonwealth Edison employees in Illinois. Pet. App. 7a, 12a. As of 1999, when discovery on the jurisdictional issues

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[1] The petitioners may be referred to collectively given the ruling of the appellate court below that with regard to the acquisition and operation of the electrical power plant involved in this case, respondent State Line Energy, L.L.C. (the formal owner of the plant) was acting as a mere agent or conduit of the other four respondents, its parent companies. Pet. App. 27a-31a; *see also* Pet. App. 44a-46a. Petitioners do not seek review of this state-law ruling on the agency relationship. *See* Pet. 13 n.8.

[2] The reference "C" is the traditional designation of the common law record used on Appeal by Illinois Courts.

was conducted, the petitioners were actively pursuing the acquisition of other Illinois facilities from Commonwealth Edison. Pet. App. 7a; *see also* C.582-84, Harrison Dep. at 65-73.

B. The Petitioners' Reliance on Illinois Property, Illinois Law, the Illinois Courts, and Other Illinois Governmental Services

The State Line Generating Station sits on the western border of Indiana, abutting the state line. C.379 (aerial photo). Not all the property associated with the plant is in Indiana, however. To reach the main entrance of the power plant (on its western side), employees must drive on a private road through part of Illinois. C.380; C.733-34, 756, Owen Dep. at 30, 34-35; C.645, Harrelson Dep. at 20. The petitioners own an Illinois property interest in this entrance road. Pet. App. 11a; C.732-34, Owen Dep. at 29-32; C.743-44.

Apart from this Illinois real estate interest, the petitioners own and store a large supply of spare parts for the plant (200 to 225 pallet loads) at a warehouse in Illinois. Pet. App. 11a; C.732-43, Owen Dep. at 26-27, 71-73; C.776-77, Long Dep. at 24, 26-27. The petitioners store this property in Illinois not because they lack storage space in Indiana but because under Illinois law they owe no tax on the property. By not storing the property in Indiana they are able to legally avoid $90,000/year in Indiana taxes. C.732-33, 745, Owen Dep. at 28-29, 78-79.

The petitioners have also relied on Illinois law to attempt to avoid regulation of their power operations under Indiana law. Even though the State Line Generating Station is technically located in Indiana, the petitioners argued that the Indiana regulators should assert no jurisdiction over the Power Plant because the power it produced would be consumed in Illinois, not Indiana, so that "Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison." Pet. App. 5a-6a; *see also* C.446-53.

In significant respects the State Line Generating Station is actually operated from Illinois. It is electronically linked with a Commonwealth Edison facility in Illinois, so that Illinois technicians may directly regulate the megawatt output at any given moment. C.776, Long Dep. at 17-20; C.734-37; Owen Dep. at 37-41. Likewise, Commonwealth Edison technicians located in Illinois handle the task of reporting environmental data on the plant to regulatory authorities, receiving the data via modem from monitoring equipment located in the station. C.779, Long Dep. at 29-30.

The petitioners also rely on Illinois law, and in one instance on the Illinois courts, for enforcement of the contracts relating to their ownership and operation of the State Line Generating Station all of which were negotiated and signed in Illinois. All but one of the six contracts between the petitioners and Commonwealth Edison provide that the terms of the agreement are enforceable solely under Illinois substantive law. Pet. App. 4a-5a. (Only one contract specifies that Indiana law controls. Pet. App. 5a.) One contract – the Coal Supply Agreement, requiring that Commonwealth Edison provide the Petitioners with all the coal they need to run the plant – designates the Illinois courts as the sole forum in which a dispute under the contract can be brought. Pet. App. 4a; C.515; C.574-76, Harrison Dep. at 36-41; (Even though the plant is located in Indiana, no contract identifies Indiana as the sole forum in which a dispute can be brought.)

The petitioners have also used Illinois governmental services in connection with the plant. The plant uses Chicago's sewage disposal system; the fact that it is technically in a different state does not prevent the plant from receiving this Illinois governmental service. Pet. App. 11a; C.736, Owen Dep. at 44. Likewise, immediately following the plant explosion that triggered the injuries in this case, the Chicago fire and police departments responded to the facility, driving to the main entrance on the same private road located in Illinois as to which the petitioners hold a property interest. Pet. App. 11a; C.734, 736-37, 756, Owen Dep. at 34-35, 44-45, 121.

There are other close connections between the plant and Illinois. For example, as soon as the petitioners purchased the State Line facility, they established a Chicago post office as an official address. C.730, Owen Dep. at 20. In one contract, that post office box address was listed as an address to which notices under the contract could be sent. Pet. App. 5a. Many of the employees who run the facility live in Illinois, including one of its top managers and one of the employees who was injured in the plant explosion and brought this case. C.434-36; C.727, 731, 747, Owen Dep. at 6, 22, 86-87. The petitioners advertise in Illinois and have had a booth or exhibit at numerous conferences in Chicago. Pet. App. 8a; C.654, 743, C.786, Long Dep. at 60. Last but not least, virtually all of the revenue received from the State Line Generating Station by the petitioners, approximately $20 to $25 million per year, comes from Commonwealth Edison's purchase of the plant's output for resale in Illinois, which will continue to be the case for at least a 15-year period. The petitioners have known from the beginning that Commonwealth Edison's right to buy the output of the plant for the purpose of resale to Illinois consumers was an essential aspect of their purchase of the plant. Pet. App. 11a; C.454-86; Harrelson Dep. at 10, 12, 15; C.643-44; Owen Dep. at 7; C.727.

C. The Petitioners' Objections to Personal Jurisdiction, and the Decisions Below[3]

On July 28, 1998, an explosion occurred at the State Line Generating Station owned by the petitioners that injured a number of employees, including respondents, leading respondents to file suit against the petitioners and Commonwealth Edison in Illinois state court. Pet. App. 2a, 38a. The

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[3] For simplicity, this summary discusses only the motions and appeals brought by the five petitioners who appear as petitioners. It does not discuss the rulings dismissing from the litigation several other corporate affiliates of the petitioners. Likewise, it does not discuss the grounds on which the courts below refused to find the existence of personal jurisdiction.

petitioners timely moved to dismiss for lack of personal jurisdiction. Pet. App. 2a.

Following substantial discovery, Pet. App. 3a, the trial court found that it possessed personal jurisdiction over the petitioners because they were "doing business" in Illinois within the meaning of the relevant Illinois jurisdictional statute, in assertion of general jurisdiction did not violate the federal Constitution. Pet. App. 13a-14a, 40a-46a.

The petitioners sought discretionary interlocutory review, which was granted. Pet. App. 14a. On appeal, despite a well-founded objection that the petitioners' brief contained a factual summary so inadequate that it violated the rules, the appellate court agreed to reach the merits. Pet. App. at 14a-15a. On the merits, it first summarized the extensive factual record concerning the contacts between the petitioners and Illinois. Pet. App. 3a-12a. Relying on that summary and then adding even further detail, the appellate court held that the petitioners were "doing business" in Illinois within the meaning of the relevant Illinois jurisdictional statute, and hence general jurisdiction existed. Pet. App. at 20a-31a.

The appellate court then addressed the federal due process issue with regard to general jurisdiction. Pet. App. at 31a-35a. Here the court cited this Court's most recent precedent on general jurisdiction, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), which it summarized as holding that general jurisdiction "is permitted only where the defendant has 'continuous and systematic general business contacts' with the forum." Pet. App. 33a (quoting 466 U.S. at 416).

Applying this legal test to the record of this case, the appellate court held that the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." *Id.* Explicitly relying on the detailed record summary it had just laid out, the court stated: "We base our conclusion on many of the same factors supporting our conclusion that these defendants are 'doing business' in Illinois." *Id.* The appellate court added that the petitioners' "contacts with

Illinois" could hardly "be characterized as random, fortuitous, or attenuated" in light of their 15-year contract "to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years," *id.*, and concluded that "in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois." Pet. App. 34a. The Illinois Supreme Court denied further review. Pet. App. 36.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT PRESENT THE QUESTION STATED IN THE PETITION, AND THERE IS NO REASON TO DOUBT THE CORRECTNESS OF THE JUDGMENT BELOW

The petitioners present this case "starkly and without factual complexity" as a means of urging that it would serve as an ideal vehicle for revisiting "the permissible scope of general jurisdiction." Pet. 5. The case is so stark and simple, they insist, that it presents the general jurisdiction issue "as clearly as that issue is ever likely to be presented." Pet. 4. But the case described by the petitioners is *not this case*, as a comparison of the petition and the decision below readily demonstrates. Thus, certiorari should be denied first and foremost because the question set forth in the petition is not actually presented by this case.

The central premise of the petition, on which the question presented is explicitly based, is that the decision below asserted general jurisdiction "to adjudicate claims" arising from an accident "at a plant located outside Illinois, *solely* on the ground that much of the product of that plant is sold, outside Illinois, to an Illinois firm." Pet. i (emphasis added). This critical assertion is repeated three times in the body of the petition. *See* Pet. 5 ("the court below ruled that the Due Process Clause was satisfied for one reason alone: because the bulk of the output of the plant where the accident occurred was sold – in Indiana –

to an Illinois firm."); Pet. 8 ("the appellate court concluded" that the contract to sell the power plant's output to an Illinois company "was sufficient to establish general jurisdiction"); Pet. 10 ("The court below ruled that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners.")

However, the court below explicitly held the opposite, as part of its analysis of whether the petitioners could be subjected to general jurisdiction under Illinois law on the basis that they were "doing business" in Illinois. Pet. App. 20a-26a.[4] Here, the court noted that under Illinois precedent dating back more than a decade and a half, even

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[4] These pages set forth the bulk of the court's analysis of the "general jurisdiction" issue. When the court later reached the federal due process issue, it merely set forth the applicable legal standard, held that the legal standard was met on this record, and referred back to the "many . . . factors supporting our conclusion that these defendants are 'doing business' in Illinois," Pet. App. 33a, which the court had already covered at Pet. App. 3a-12a, 20a-26a. The rationale for the court's extended treatment of the state-law "doing business" issue, and its shorthand treatment of the federal due process issue, is clear on this record. As the petitioners correctly observed in their brief below, "[t]he Illinois Supreme Court has held that 'doing business' pursuant to 735 ILCS 5/2-209(b)(4) is *not* co-extensive with the federal 'minimum contacts' standard; rather, a separate and more stringent standard is to be applied by Illinois courts. What constitutes doing business is a *high* standard." Brief and Argument of Defendants-Appellants in No. 99-3015 (App. Ct. Ill., 1st Dist.), filed December 29, 1999, at 10 (citations omitted). The court below agreed with the petitioners on this point. Pet. App. 20a. Thus, it focused its attention on the dispositive issue, whether the more stringent state-law "doing business" standard was met on this record. Once it ruled in favor of respondents on that issue, the conclusion that the less stringent federal due process standard was met followed automatically and required little additional analysis.

"substantial revenues from sales in Illinois are not enough to satisfy the 'doing business' standard in cases not involving product defects." Pet. App. 22a (citing *National Gas Pipeline Co. v. Mobil Rocky Mountain, Inc.*, 155 Ill.App.3d 841, 843, 508 N.E.2d 211, 213 (1986); and *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill.App.3d 308, 318-19, 594 N.E.2d 1190, 1198 (1992)). The court then held that "[b]ecause plaintiff's causes of action here do not involve injuries resulting from the sale of State Line Energy's product," the exemption for product liability cases did not apply here – so that general jurisdiction could *not* be found based solely on sales to an Illinois firm. Pet. App. 23a.

The fact that the court below explicitly held that under controlling Illinois law the petitioners' sales to an Illinois firm were *not* sufficient to establish general jurisdiction is enough to show the error of the assertion that the decision below rested "solely on the ground that much of the product of that plant is sold, outside Illinois, to an Illinois firm." Pet. i. Following this holding the court went on to note the ample other evidence (summarized earlier in its decision, Pet. App. 3a-12a), above and beyond the sales to an Illinois firm, that the petitioners had been "doing business" in Illinois and hence were subject to the general jurisdiction of the Illinois courts. Pet. App. 23a. This evidence, which is also summarized on pp. 1-5, *supra*, convinced the court that "State Line Energy is more like a resident of Illinois than most out-of-state businesses," Pet. App. 23a, and "that State Line Energy was 'doing business' in Illinois," Pet. App. 26a – as were the other petitioners, using State Line Energy as an agent. Pet. App. 27a-31a; see also note 1, *supra*. In finding the less stringent federal due process standard met, see note 3, *supra*, the court reiterated that "many . . . factors" (discussed earlier) supported its conclusion that "in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois." Pet. App. 33a-34a. The appellate court's reliance

on a wide range of evidence in reaching its ultimate conclusion on the general jurisdiction issue could hardly be clearer.[5]

In sum, the "stark" and factually simple issue that the petition asserts this case turns on does not exist. All that is involved here is the appellate court's careful application of a settled legal test to the facts contained in a 1500-page record, which it addressed on a dozen pages of its opinion. This Court should therefore deny certiorari on the basis that the question set forth in the petition is not actually presented by this case.

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[5] Ignoring all the points discussed in text, in a cryptic footnote the petitioners maintain that "the only fair reading of the opinion of the appellate court" is the petitioners' sales to a firm in Illinois were sufficient for general jurisdiction, given that the fact of those sales was referenced "repeatedly" by the appellate court. Pet. 10 n.7. But presumably a fair reading of the opinion would note the appellate court's holding that under controlling Illinois law, general jurisdiction *may not* be found based solely on sales to an Illinois firm. Pet. App. 22a. Obviously, the petitioners' reading is not a fair reading of the opinion, much less the *only* fair reading.

In this footnote the petitioners dismiss the "other facts" discussed on twelve pages of the opinion (*see* Pet. App. 3a-12a, 23a, 33a) on the theory that all the appellate court did was "occasionally mention" these facts, and it supposedly "gave no indication whatever that it would have reached a different conclusion in the absence of any of these facts." Pet. 10 n.7. This theory attacks the professional competence of the court below. Any petition for certiorari that depends for its plausibility on the theory that an appellate court set forth twelve pages of factual analysis for no reason should be denied outright. In any event, the appellate court *did* indicate that it would reach a different conclusion in the absence of the evidence summarized at pp. 1-5, *supra*, when it ruled that absent such evidence it would be constrained under Illinois law to hold that there was no general jurisdiction on the basis merely of sales to an Illinois firm. Pet. App. 22a-23a.

II. CONSIDERATION OF THE ACTUAL FACTS OF RECORD DEMONSTRATE THAT THERE IS NOTHING CONTROVERSIAL ABOUT ILLINOIS' TAKING JURISDICTION IN THIS CASE

Despite being warned by the Illinois Appellate Court that their brief "omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' [petitioners'] position," and that their "statement of facts is grossly inadequate," petitioners offer this Court a woefully inadequate statement of the actual facts of the case and the legal standard employed by the Illinois Appellate Court, and create a claim of confusion in the lower courts only by misstating the nature of the case. When the facts are fully and fairly stated, the case for personal jurisdiction is compelling.

A. The Conduct of the Petitioners Amounted to a Joint Undertaking or Even De Facto Partnership in Connection with the Operation of this Power Plant.

Petitioners' sole question presented is whether Illinois courts may exercise personal jurisdiction over the owners of an out-of-state power plant arising from an accident outside of Illinois "solely on the ground that much of the product of that plant is sold, outside of Illinois, to an Illinois firm." The fact is, however, that the Illinois Appellate Courts' decision upholding jurisdiction as to petitioners, while holding that jurisdiction was lacking as to other defendants in the same corporate family, was based on a set of facts that is missing from the petition for certiorari. *Alderson v. Southern Co.*, 321 Ill.App.3d 832; 747 N.E.2d 926. When those facts are acknowledged, the propriety of personal jurisdiction in this case is overwhelmingly clear.

Like many personal jurisdiction cases, the facts are crucial, and the facts that were undisputed in the Appellate Court are these. The lawsuit arose when plaintiffs were injured in a coal dust explosion at the State Line Generating Station in Hammond, Indiana, referred to as "Power Plant"

in the Appellate Court opinion and hereinafter. 321 Ill.App.3d at 836, 747 N.E.2d at 930 (Pet. App. at 2a). Prior to April 17, 1996, the Power Plant was wholly owned by the Commonwealth Edison Company of Indiana, which itself was wholly owned by Commonwealth Edison, an Illinois company.

In 1996, petitioners and Commonwealth Edison agreed to enter into what amounts to a de facto partnership involving both Indiana and Illinois. In order to understand the relationship, it is important to know that whereas the front door of the Power Plant was in Indiana, the road leading into it was in Illinois. In fact, virtually the sole means of ingress and egress to the Power Plant was an Illinois road – i.e., a road located in Illinois leading to the Power Plant that was maintained and controlled by Illinois. The Power Plant secured Illinois easements to assure that ingress and egress was possible. In sum, the Power Plant was located precisely on the border of the two states, and its sole function was to furnish power for Illinois. The Opinion of the Appellate Court describes in detail the interaction between Commonwealth Edison and the petitioners to clearly indicate that the Power Plant was a joint effort.

B. The Sole Function of the Petitioners' Undertakings with Commonwealth Edison was to Deliver Electricity to Illinois.

The sole function was set forth in the purchase agreement between State Line Energy and Commonwealth Edison. The agreement required State Line Energy to supply all of the Power Plant's electrical power exclusively to Commonwealth Edison for 15 years. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). State Line Energy, the purchaser partner in this de facto relationship, was an Indiana limited liability company established for one purpose: i.e., to own the power plant and to honor the contract with Commonwealth Edison, the Illinois company. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 3a). At the time of the accident, all of the employees at the Power Plant were on the

payroll of Southern Energy Resources, one of the companies in the Southern Company "family."

Not only was the Power Plant dedicated to supplying power exclusively to Commonwealth Edison in Illinois, but Commonwealth Edison also retained title to transmission equipment on the premises of the Power Plant. Thus, the relationship of State Line Energy and Commonwealth Edison was this: State Line Energy owned the Power Plant while Commonwealth Edison owned the transmission equipment in the plant. It was this equipment that generated the electricity which went exclusively to Illinois. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a).

C. Petitioners Specifically, Explicitly and Repeatedly Sought Protection of Illinois Law

The sales transaction and the Power Purchase agreement between State Line Energy and Commonwealth Edison was intended to assure that Illinois would receive electricity and that Illinois law would govern any dispute between the parties. In fact, the parties executed two separate agreements, an Asset Sale Agreement and a Power Purchase Agreement. They deliberately executed these documents in Illinois, and both parties specifically agreed in those agreements that Illinois law would govern. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). Thus, State Line Energy deliberately and explicitly invoked the protections of Illinois law with respect to the sale and the operation of the Power Plant.

But, this was not the full extent of the cooperative venture between State Line Energy and Commonwealth Edison. The two parties entered into a third agreement, called the Coal Supply Agreement, more than a year after the Asset Sale and Power Purchase Agreements were signed. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). The Coal Supply Agreement bound Commonwealth Edison to supply all of the coal needed to fuel the Power Plant and thereby generate electricity for Illinois. In substance, the Illinois company agreed to supply all of the coal to State

Line, in order to assure that State Line could generate all of the electricity that Commonwealth Edison wanted for Illinois. As in the earlier agreements, the parties specifically and explicitly provided in the Coal Supply Agreement that Illinois law would govern the contract. The intent of the parties was clear: to assure that Illinois law governed this cooperative undertaking and effectively the running of the Power Plant.

In the month before the accident giving rise to this lawsuit, Commonwealth Edison entered into a Training Services Agreement with State Line Energy. Commonwealth Edison agreed to provide emergency response training to State Line Energy. The training was to be provided in Illinois, and Illinois law was explicitly chosen to govern the agreement. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). In addition, Commonwealth Edison agreed to a consulting arrangement with State Line Energy in which all tests conducted by Commonwealth Edison would be done in Illinois. C.738, Owen Dep. at 49.

From the time the Power Plant was sold to State Line Energy until the explosion, State Line Energy had sought the protection of Illinois law with respect to every aspect of the Power Plant's operations. The only time in which State Line Energy relied upon Indiana law was with respect to a Consulting Services Agreement with Commonwealth Edison in which Commonwealth Edison undertook to provide consulting services to State Line Energy. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a).

Not only did State Line Energy avail itself of Illinois law with respect to the sale and operation of the Power Plant, but it went further and informed Indiana officials that it desired to be exempt from Indiana law and to be regulated by Illinois law. Specifically, at the time it purchased the Power Plant, State Line Energy filed a petition with the Indiana Utility Regulatory Commission requesting that the Commission refrain from asserting jurisdiction over the Power Plant. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The reason offered by State Line Energy is critical. State Line Energy informed the Indiana Commission that it would not

sell to wholesale or retail customers in Indiana and specifically asserted that it was submitting to the jurisdiction of the Illinois Commerce Commission which "is currently holding hearings on the proposed transaction and impacts in Illinois where most, if not all, of the Plant's output will be utilized." Not only did State Line Energy represent to the Indiana Commission that the Illinois Commerce Commission would examine the impacts of the Power Plant on Illinois, but State Line went even further and told the Indiana Commission that it "was subject to the regulation of the Federal Energy Regulatory Commission and that Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison." 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 6a). The latter representation was an explicit recognition that Illinois was regulating the Power Plant through Commonwealth Edison.

In addition, petitioners decided to store the Power Plant's spare parts in Illinois rather than Indiana, specifically to avail itself of the more favorable tax treatment available to it in Illinois. The record clearly established that petitioners owned and stored in Illinois between 200 and 225 pallet loads of spare parts. [Pet. App. at 11a] If petitioners had stored these parts in Indiana, they would have had to pay $90,000 in Indiana taxes. [C.732-33, 745] But, rather than pay these taxes and submit their property to Indiana jurisdiction, petitioners deliberately chose to locate in Illinois and to keep the Power Plant's spare parts within the specific jurisdiction of Illinois.

In addition, the Power Plant deliberately chose to have the City of Chicago take responsibility for sewage disposal from the Power Plant. Petitioners could have opted to have Hammond, Indiana take this responsibility, but instead they willingly, knowingly and deliberately availed themselves of Illinois law and placed themselves in the hands of the City of Chicago. C.736, Owen Dep. p. 44.

It is difficult to imagine how companies could have more clearly availed themselves of Illinois law and deliberately subjected themselves to Illinois jurisdiction.

D. The Output of the Power Plant was Directly Controlled from a Facility Inside Illinois

The common undertaking between petitioners and Commonwealth Edison did not consist merely of these agreements. Not long after the Coal Supply Agreement was signed, the two parties signed a "Facilities Agreement" that was intended to assure that State Line Energy would operate the Power Plant in order to provide the power that Illinois required and that the State Line-Commonwealth Edison arrangement was set up to assure. Like the three other agreements that preceded it, this one again provided that Illinois law would govern the relationship between the two parties. Pursuant to this Agreement, a dedicated telephone line was established between the Power Plant and Commonwealth Edison's offices in Illinois. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The dedicated telephone line enabled Commonwealth Edison to inform State Line Energy of its electricity requirements and also to enable Commonwealth Edison to communicate and exercise some control over the way in which the facilities of the Power Plant were managed as the various agreements described above provided. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The agreements and the dedicated line demonstrated that the joint undertaking was not simply a matter of paper agreements. Rather, State Line Energy and Commonwealth Edison worked in tandem with Illinois law governing all of the conduct and with Commonwealth Edison in Illinois having legal control over all of the equipment in the Power Plant and a legal right to assure that the facilities were operated to provide Commonwealth Edison with the Illinois power it required.

Moreover, it is clear that Commonwealth Edison in Illinois could, through the use of the dedicated phone line and also through a signaling mechanism which originated in Illinois, directly controlled the hour to hour output of the plant. C.734-37, Owen Dep. p. 37-41; C.775-77, Long Dep. pp. 19-20. Thus, in furtherance of the joint undertaking and cooperative venture between them, Commonwealth Edison,

actually controlled the operation of the Power Plant from Illinois.

E. Petitioners Omit Almost All Relevant Facts from Their Petition

All of these facts are set forth, as the citations indicate, in the careful Opinion of the Illinois Appellate Court. Virtually none of them are found in the Petition for Certiorari. Like the brief filed by petitioners in the Illinois Appellate Court, the petition for certiorari "omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' [petitioners'] position," and their "statement of facts is grossly inadequate." 321 Ill.App.3d at 844-45, 747 N.E.2d 937, Pet. App. 14-75(c).

Two more facts not mentioned in the petition for certiorari warrant mention. The first is that State Line Energy advertised itself in Illinois. 321 Ill.App.3d at 840, 747 N.E.2d at 933 (Pet. App. at 8a). The second is that State Line Energy not only advertised in Illinois, but it succeeded in attracting and retaining many Illinois residents to work in the Power Plant. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 3a).

F. The Case for Personal Jurisdiction is Overwhelming

On these facts, the case for personal jurisdiction is incredibly strong. State Line Energy was involved in a joint undertaking with Commonwealth Edison. While State Line Energy owned the Power Plant, Commonwealth Edison owned the transmission equipment needed to generate electricity. Every important agreement between the de facto partners was intended to provide the Illinois company with an ability to exercise control over the conduct of the Power Plant in order to assure that the sole purpose of the Power Plant – i.e., to supply power to Illinois – was accomplished. State Line Energy explicitly, deliberately and repeatedly availed itself of Illinois law, and went so far as to ask Indiana not to regulate it so that it could be regulated and monitored

by Illinois. It advertised, recruited and hired workers from Illinois. On these facts, there can be no doubt that the Due Process Clause is satisfied by the exercise of jurisdiction over State Line Energy.

Respondents submit that under the clear guidance of this Court's decisions, the exercise of jurisdiction on these facts cannot be questioned. *See, e.g., Republic of Argentina v. Weltover*, 504 U.S. 607, 619-620 (1993) ("we find that Argentina possessed 'minimum contacts' that would satisfy the constitutional test. By issuing negotiable debt instruments denominated in United States dollars and payable in New York and by appointing a financial agent in that city, Argentina 'purposefully availed itself of the privilege of conducting activities within the [United States].' *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), *quoting Hanson v. Denckla*, 357 U.S. 235, 253, (1958)").

G. The Illinois Court Applied Section 2-209 of the Illinois Code, *see* 735 ILCS 5/2-209(b)(4) (West 1998), in a Narrow, Careful and Prudential Way

Section 2-209 of the Illinois Code, *see* 735 ILCS 5/2-209(b)(4) (West 1998), provides in relevant part: "(b) A court may exercise jurisdiction in any action arising within or without this State against any person who: * * * (4) Is a natural person or corporation doing business within this State." The court found that this section of the Code provided jurisdiction over petitioners.

When we turn to the Illinois Appellate Court's reasoning, it is apparent that it bears no relationship to the wild, elastic approach to jurisdiction suggested in the Petition. In truth, the Illinois Court took a very narrow view of jurisdiction under section 2-209(b)(4), and was very explicit about its care in using the section. The Court wrote as follows:

> *The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum.* * * * The defendant

> must transact business in Illinois "not occasionally or casually, but with a fair measure of permanence and continuity." * * * Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. * * *

321 Ill.App.3d at 848-49, 747 N.E.2d at 940 (Pet. App. at 20a). (emphasis added).

Having set the bar high for a showing of personal jurisdiction based on "doing business," the Appellate Court found that petitioners clearly were doing business in Illinois. This finding is hardly surprising and is not inconsistent with any case cited by petitioners. The following facts, unique to this case, distinguish it from any that petitioners cite:

1. The sole purpose of the Power Plant was to provide electricity to Illinois; it did no other business and had no other purpose. The Power Plant was controlled from Illinois through a dedicated phone line and signaling system.

2. State Line Energy was the Indiana owner of the Power Plant, but Commonwealth Electric was the Illinois owner of the transmission equipment at the Power Plant. The spare parts for the Power Plant were kept in Illinois.

3. State Line Energy entered into various agreements in which it sought and obtained the benefit of Illinois law and was required to operate the Power Plant in accordance with the wishes of Commonwealth Edison.

4. State Line Energy affirmatively requested exemption from Indiana law so that it could be regulated by Illinois through its de facto partner, Commonwealth Edison. And State Line Energy deliberately chose to subject itself to Illinois rather than Indiana taxation.

5. State Line Energy affirmatively advertised in Illinois, recruited Illinois workers to work in the Power Plant, had a work force with many Illinois workers, and the explosion at the Power Plant put these workers at risk.

On these facts, there can be no doubt that petitioners did business in Illinois. In fact, they did business nowhere else. Thus, exercise of jurisdiction is completely consistent with

this Court's decisions in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 416 (1984). Petitioners informed Indiana that they would not sell in Indiana and thus would do no business there and should not be regulated there. At all times, both in their agreements and in their running of the Power Plant, petitioners recognized that they were doing business only in Illinois, submitting to Illinois law, and seeking exclusive Illinois jurisdiction.

H. There is Nothing Unusual in this Case Other than the Strength of the Facts Supporting Jurisdiction

When the facts of the case are carefully examined as they were by the Illinois Appellate Court and they are in this Opposition, it is clear that there is nothing surprising in this fact-specific decision of the Illinois Appellate Court and there is no need for this Court to waste its important review function on this case.

III. NOTHING IN THE BODY OF THE PETITION MERITS A GRANT OF PLENARY REVIEW

Even setting aside the fact that the question presented by the petitioners is not posed by this case, there is nothing set forth in the body of the petition that merits a grant of plenary review.

1. The petitioners offer two main reasons for review. First, they contend that the judgment below is in error, because it supposedly cannot be reconciled with this Court's decisions in *Perkins v. Benguet Consolidated Mining Co.*, 432 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416 (1984). Pet. 10-15. However, this contention explicitly depends on the hypothesis that the appellate court held "that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners." Pet. 10. As already explained, that hypothesis is incorrect.

The petitioners make no effort to argue that, if the result below actually turned on the appellate court's application of settled law to an extensive factual record, review would still be warranted. Indeed, they concede that typical "multi-factor" cases, in which courts "assert general jurisdiction . . . by concatenating a large number of contacts and concluding that in combination they are sufficient to establish general jurisdiction . . . are seldom well suited for this Court's review, because they are unlikely to provide clear guidance for future cases in which a different combination of factors is present." Pet. 5. Of course, this is one of those typical cases. The decision below turned on a multi-factor, record-intensive analysis. The court below held that the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them" based "on many . . . factors." Pet. App. 33; *see also* Pet. App. 3a-12a, 20a-26a. The petitioners' own evaluation of what makes for a certworthy case calls for the denial of certiorari here.

In any event, no basis to question the correctness of the judgment below is evident. The petition contains no analysis of the actual record facts, and the facts summarized in the decision below and in this opposition easily support a finding of general jurisdiction under well-settled law.

From 1993 through 1999, when discovery closed, the petitioners were actively engaged in an effort to purchase electrical power plants in or near Illinois, making a significant number of trips to Illinois in the process. In 1996, they were successful in purchasing the State Line Generating Station at issue in this case. In purchasing that plant situated on the Illinois-Indiana border, and afterwards, the petitioners "cherry picked" the property, law, courts, and other governmental services of Illinois and Indiana as best suited their interests. On most of the contracts governing the purchase and operation of the plant, they relied on Illinois substantive law for enforcement; in one contract they designated Illinois as the exclusive forum for resolving any disputes. On yet another contract, the petitioners opted to rely on Indiana

substantive law. With regard to real estate for plant operations, the petitioners used entirely Indiana land, except that they obtained an Illinois property interest in the private road leading to the main entrance, and they stored spare parts on Illinois land to avoid $90,000/year in Indiana taxes. To avoid the jurisdiction of Indiana regulators, the petitioners represented that their acquisition of the plant would in effect be regulated by Illinois regulators, through regulation of Commonwealth Edison – which is consistent with the fact that Commonwealth Edison technicians routinely control plant functions, and monitor the plant for environmental compliance, from an office located in Illinois. The plant uses the Chicago sewage disposal system and, in emergencies, Chicago fire and police department services (as illustrated by their response on the day of the explosion).

Based on these and many other business connections between the petitioners and Illinois, the appellate court observed that State Line Energy (the Southern entity that formally owns the plant) is "more like a resident of Illinois than most out-of-state businesses." Pet. App. 23a. It went on to hold that the activities of the petitioners in acquiring the plant and operating it through State Line Energy, serving as their agent, constituted " 'continuous and systematic general business contacts' with the forum" within the meaning of the controlling *Helicopteros* test. Pet. App. 33a (quoting 466 U.S. at 416).

The petitioners assert that the contacts between them and the forum state "are, if anything, less significant" than the contacts found inadequate in *Helicopteros*. Pet. 13. But most of the contacts of potential significance that the *Helicopteros* decision observed which were *not* present in that case, *see* 466 U.S. at 411, are present in this case:

- In *Helicopteros* this Court noted that the defendant had never "sold any product that reached Texas." By contrast, the petitioners are selling essentially the entire output of the plant, worth $20 to $25 million a year, to Commonwealth Edison for immediate resale in Illinois, and are committed to doing so for a 15-year period.

- In *Helicopteros* this Court noted that the defendant "never solicited business in Texas." By contrast, the petitioners actively solicited business in Illinois, in person, over a multi-year period, leading to the purchase of the very power plant involved in this case.

- In *Helicopteros* this Court noted that the defendant "never signed any contract in Texas." By contrast, in the course of purchasing and operating the power plant involved in this case, the petitioners negotiated and signed six contracts in Illinois, five of which rely on substantive Illinois law for their enforcement, and one of which designates the Illinois courts as the exclusive forum for the resolution of any disputes.

- In *Helicopteros* this Court noted that the defendant "never has owned real or personal property in Texas." By contrast, the petitioners have owned or leased both real and personal property in Illinois (the property interest in the road running to the main entrance and the spare parts stored in Illinois to save taxes, and the Chicago post office box rented as an official address for the power plant).

2. As a second reason for review, the petitioners argue that the state and lower federal courts are deeply divided about the permissible extent of general jurisdiction. Pet. 15.

Pointing to the opinion of commentators that confusion exists in this field, the petitioners suggest that the test laid out by this Court in *Helicopteros*, requiring "continuous and systematic" contacts, is insufficiently definite, so that this Court should further clarify the test. Pet. 15-16, 23-25. But the imprecision attacked by the petitioners is an inherent feature of the traditional test, and there is no basis to assume that the test can be materially improved upon. One of the leading scholars on the subject of general jurisdiction has recently put the point this way:

> [G]iven the variety of business activities that can occur in a forum and our uncertainties about the constitutional underpinnings of the doctrine, devising a more definitive standard is just too hard. Courts and legislatures discovered early on that it

> is hard to define "doing business" with any precision. The best they can do is to indicate that continuity and perhaps substantiality are important – after that, things pretty much come down to a question of degree.[6]

As to their principal claim of conflict, the petitioners assert that this Court should review what they call "settled Illinois law," supposedly reflected in the decision below, "that even when a defendant has no physical presence whatever in a state, sales to a firm incorporated in that state can establish general jurisdiction." Pet. 17. As already explained, settled Illinois law is actually to the contrary, and the decision below rested on no such holding. See pp. 8-9, *supra*.[7]

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[6] Mary Twitchell, *Why We Keep Doing Business With Doing-Business Jurisdiction*, 2001 U. Chi. Legal Forum 171, 194-95 (2001); *see also id.* at 196 ("doing-business jurisdiction generally does little harm"). Compare Pet. 2 (asserting without explanation that the issue of general jurisdiction "is perhaps the single most important unresolved issue in the law of civil procedure"). Professor Twitchell's suggestion that, as a practical matter, the general jurisdiction doctrine is best left alone is notable in that it comes from a scholar who has been quite critical of the conceptual coherence of current doctrine. *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610 (1988).

[7] The petitioners claim that "settled Illinois law" permits a finding of general jurisdiction on mere sales within Illinois, but in support they cite only product liability cases, Pet. 17 n.11, ignoring that such cases are an exception to the general rule, applied in the decision below, barring a finding of general jurisdiction merely based on sales. Pet. App. 22a-23a.

In addition, the petitioners' current assertion that "settled Illinois law," Pet. 17, is supposedly "extreme" on this point, Pet. 19, is inconsistent with their observation in the Illinois Supreme Court that: "Before the opinion below, Illinois courts carefully applied federal due process limitations, and always made sure that 'doing business' for purposes of 'general' jurisdiction meant that the nonresident corporation conducted business in

Thus, the conflict in the lower courts suggested in the petition, Pet. 17-22, is irrelevant to this case.

IV. THAT THERE IS PERSONAL JURISDICTION OVER PETITIONERS IS INDISPUTABLY CORRECT, AND THERE IS NO CASE THAT PETITIONERS CITE THAT IS INCONSISTENT WITH THE DECISION OF THE ILLINOIS APPELLATE COURT.

There is no case cited by petitioners that has facts similar to the instant case. All of the cases cited by petitioners as taking an expansive view of personal jurisdiction are distinguishable from the instant case. There is no court of which we are aware that has held or suggested that it would hold that personal jurisdiction cannot be exercised when the following facts are present.

1. An out-of-state company is created for the sole purpose of providing electricity to the forum state, and the company did no other business and had no other purpose. Control over the power generation is exercised from the forum state.

2. The out-of-state company entered into cooperative venture with a forum state company in which the out-of-state company owned a power plant while the forum state company owned all the equipment at the Power Plant, and the spare parts for the Power Plant were kept in the forum state.

3. The joint operators of this Power Plant entered into various agreements in which both sought and obtained the

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Illinois of such a character and to such an extent as to warrant the inference that it had purposefully availed itself of the benefits and protection of the laws of Illinois. To assure adherence to these constitutional limitations, Illinois required continuous, permanent, ongoing and systematic contacts in the forum to support general jurisdiction." Petition for Appeal as a Matter of Right or, in the Alternative, for Leave to Appeal, filed June 13, 2001, at 9 (citations omitted).

benefit of the forum state's law and was required to operate the power plant in accordance with the wishes of the forum state company.

4. The out-of-state company affirmatively requested exemption from its home state law so that it could be regulated exclusively by the forum state. The out-of-state company sought protection of the forum state's tax laws.

5. The out-of-state company affirmatively advertised and recruited and hired employees in Illinois to the extent that many of its employees, whose sole job was to generate electricity for Illinois, resided in Illinois.

Not a single case cited by petitioners comes close to this case on its facts. Only by misstating the facts found by the Illinois Appellate Court and misstating the holding of that court can petitioners create an illusory impression of a conflict. There may be a conflict in the lower courts as to the precise scope of general jurisdiction,[8] but there is no decision that casts doubt on the existence of jurisdiction on the facts of this case. Respondents respectfully submit that there is no need for this Court to review a decision so obviously correct on its facts when there is no conflict between it and any decision of this Court or any other lower court.

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[8] For example, the petitioners assert that lower courts disagree as to whether sales in a forum state can give rise to general jurisdiction. Petition at 20. Whether or not there is actually a conflict in the lower courts as opposed to a fact-specific difference in result is irrelevant here, because the Illinois Court of Appeals was not relying simply on sales in Illinois. Unlike petitioners, the Illinois Court of Appeals was relying on all of the ties that petitioners had to Illinois, including their deliberate decisions to seek protection of Illinois law and to avoid the requirements of Indiana law. No case cited by petitioners is even close on the facts.

V. THE RECORD CLEARLY SHOWS THAT DUE PROCESS REQUIREMENTS HAVE BEEN SATISFIED IN THIS CASE.

Wholly aside from whether the Illinois Appellate Court properly found that petitioners were "doing business" in Illinois, the Illinois court plainly and clearly used this court's minimum contacts analysis to find that Due Process was satisfied in the exercise of personal jurisdiction, and there is nothing in the Appellate Court's analysis that is inconsistent with this Court's decisions or in conflict with any case cited by petitioners. Petitioners neglected to inform this Court of the alternative minimum contacts analysis which by itself supports the exercise of jurisdiction independently of the "doing business" analysis, and which petitioners do not challenge in their Petition.

Wholly aside from 2-209(b)(4) and the "doing business analysis," the Illinois Appellate Court also relied upon 2-209(c) of the Illinois Code. The Legislature added subsection (c) to section 2-209 of the Code in 1989. Since then, Illinois courts have treated section 2-209(c) as an independent basis for asserting *in personam* jurisdiction over a defendant. *Flint v. Court Appointed Special Advocates of Du Page County, Inc.*, 285 Ill.App.3d 152, 165, 674 N.E.2d 831, 841 (1996); *Allerion, Inc. v. Nueva Icacos, S.A.*, 283 Ill.App.3d 40, 47, 669 N.E.2d 1158, 1163, 218 Ill. Dec. 632 (1996). This independent ground of jurisdiction is ignored in the Petition for Certiorari even though it provides an alternative and independent ground for the decision below and is not challenged in the Petition.

It is very clear why the Petition fails to mention this independent ground for decision: i.e., the Illinois Appellate Court carefully and correctly applied the law established by this Court.

> Federal due process requires that, in order to exercise *in personam* jurisdiction over a nonresident defendant, it is necessary that the defendant have certain "minimum contacts"

with the forum state such that the maintenance of the suit there does not offend " 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 102, 66 S. Ct. 154, 158 (1945), *quoting Milliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed. 278, 283, 61 S. Ct. 339, 343 (1940). Those minimum contacts must have a basis in " 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' " *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109, 94 L. Ed. 2d 92, 102, 107 S. Ct. 1026, 1030 (1987), *quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 85 L. Ed. 2d 528, 542, 105 S. Ct. 2174, 2183 (1985). Satisfaction of this requirement ensures that an alien defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts, or the unilateral act of a consumer or some other third person. *Burger King Corp.*, 471 U.S. at 475, 85 L. Ed. 2d at 542, 105 S. Ct. at 2183.

A court conducting a federal due process analysis must consider whether (1) the nonresident defendant had "minimum contacts" with the forum state such that there was "fair warning" that the nonresident defendant may be hailed into a forum court; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state. *Burger King Corp.*, 471 U.S. at 471-77, 85 L. Ed. 2d at 540-44, 105 S. Ct. at 2181-84; *Kalata* [*v. Healy*], 312 Ill.App.3d [761] at 768-69, 728 N.E.2d [648] at 654.

> The "minimum contacts" and "fair warning" requirements are satisfied if the defendant has purposefully directed his activities at Illinois residents, reached out beyond one state to create continuing relationships with citizens of another state, or purposefully derived benefits from its activities within the forum state. *Burger King Corp.*, 471 U.S. at 471-74, 85 L. Ed. 2d at 540-41, 105 S. Ct. at 2181-83; *Kalata*, 312 Ill.App.3d at 769, 728 N.E.2d at 655. As we discussed in connection with the "doing business" analysis, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. * * *

321 Ill.App.3d at 856, 747 N.E.2d at 946-47 (Pet. App. at 31a-32a).

It is apparent from this analysis that the Illinois decisions are completely consistent with this Court's minimum contacts decisions, and that the decision below rests entirely and independently on a minimum contacts analysis that is not challenged in the Petition. Since petitioners do not challenge this independent ground for decision, there is no point in this Court's reviewing the decision below. This ground for decision will stand even if the "doing business" analysis is flawed, which respondents submit it is not.[9]

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[9] It is almost incredible but true that petitioners do not mention 735 ILCS 5/2-209(c) in their discussion. The Petition notes that the Illinois Court of Appeals engaged in Due Process review (Petition at 7) but fails to mention that §2-209(c) is an independent basis for jurisdiction that requires application of this Court's minimum contacts analysis.

CONCLUSION

The decision by the Illinois Appellate Court is consistent with this Court's decisions in every way. On the facts presented here, there is an overwhelming case for personal jurisdiction over petitioners. The Illinois Appellate Court carefully analyzed the evidence as to each defendant and concluded that petitioners clearly were "doing business" in Illinois. Indeed, they were de facto partners with Commonwealth Edison in a venture that only did business in Illinois. Moreover, wholly aside from whether petitioners "did business" and were subject to general jurisdiction, the Illinois Appellate Court properly found that petitioners had minimum contacts with Illinois sufficient to satisfy the Due Process Clause. This finding is not challenged in the Petition for Certiorari and provides an independent basis for jurisdiction. In sum, there is nothing in this fact-driven case that suggests any need for this Court's review.

The Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

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No. 01-1200

IN THE
Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,

Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE DEFENSE RESEARCH INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF OF THE DEFENSE RESEARCH INSTITUTE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

Pursuant to Rule 37.2 of the Rules of this Court, the Defense Research Institute (DRI) respectfully moves for leave to file the attached brief *amicus curiae* in support of petitioners. Petitioners have consented to the filing of this brief. This motion is necessary because counsel for respondents have refused consent.

The DRI is an international organization that includes over 21,000 lawyers involved in the defense of civil litigation. Committed to enhancing the skills, effectiveness and professionalism of defense lawyers, the DRI seeks to address issues germane to defense lawyers and the civil justice system, promote appreciation of the role of the defense lawyer, and improve the civil justice system. The DRI has long been a voice in the ongoing effort to make the civil justice system more fair and efficient. The DRI believes that resolution of the important issue presented by this petition will provide greater certainty for entities to formulate their business contacts with a given forum and for litigants, thus, enhancing the judicial system's actual and perceived fairness and efficiency for the following reasons.

The pervasive power inherent in the exercise of general jurisdiction demands a clear and demanding standard for its proper use. The unresolved question is what are constitutionally "continuous and systematic general business contacts" sufficient to subject a nonresident entity to unlimited personal jurisdiction in a particular forum. Critically, the answer to this question should also make clear what conduct does not. It is a question to which U.S. and foreign businesses have no definitive answer. In part, this is a direct result of misapplication of this Court's holdings.

The "continuous and systematic contacts" standard articulated by this Court in *Perkins v. Benguet Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), seems a presence-based standard focused on intrastate rather than interstate contacts. This, however, is not the standard currently applied by many courts, such as the Illinois court in this case. Only this Court can clarify the standard so that lower courts and potential defendants have a precise and uniform test to prospectively apply and to retrospectively protect them.

The DRI has a strong interest in this issue because it adversely affects the U.S. and foreign business organizations represented by its members. Since application of the law as it is currently interpreted makes potential exposure to general jurisdiction largely unpredictable, lawyers and business organizations cannot have any level of assurance as to what "continuous and systematic contacts," under a due process analysis, are sufficient to exercise general jurisdiction over that entity. The cost of uncertainty is incalculable but very real. Unfortunately and unnecessarily, the widespread inconsistency among lower courts makes it necessary to regularly defend against assertions of general jurisdiction when the factual foundation for such assertions is lacking under the standard set by this Court. Because of its national and international scope, the DRI seeks to offer the Court a unique perspective on the problems raised by the current inconsistencies in our general jurisdiction jurisprudence.

The DRI's brief seeks to present the broader policy reasons why it is crucial that this Court accept this opportunity to draw clear boundaries for general jurisdiction. It also suggests a definitive core approach that will effectively satisfy the fairness, efficiency and due process concerns that

underlie the law of jurisdiction. It is important not only to defendants but to our civil justice system as a whole that clear and coherent rules govern whether a nonresident entity's contacts with a forum subject it to unlimited jurisdiction there. The DRI, therefore, respectfully moves for leave to submit the attached brief to assist the Court in its determination of whether to grant further review.

Respectfully submitted,

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TABLE OF CONTENTS

Page

Table of Authorities ii

Statement of the Interest of *Amicus Curiae* 1

Summary of Argument 2

Argument 4

I. This case demonstrates it is crucial that this Court clarify when a defendant does "continuous and systematic" business in a forum so that it is subject to general jurisdiction there. 4

II. State and Federal Courts have stretched the broad "continuous and systematic general business contacts" standard beyond its constitutional limits 8

III. A clarification from this Court is necessary to curtail forum-shopping and limit wasteful litigation 17

Conclusion 19

TABLE OF CITED AUTHORITIES

Page

CASES

Alderson v. Southern Co., 747 N.E.2d 826 (Ill. App. 2001) 7, 14, 18

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987) 12

Associated Transport Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A., 197 F.3d 1070 (11th Cir. 1999) 14

Bearry v. Beech Aircraft Corp., 818 F.2d 370 (5th Cir. 1987) 5

Buddensick v. Stateline Hotel, Inc., 972 P.2d 928 (Utah App. 1998) 5, 14, 15

Dalton v. R & W Marine, Inc., 897 F.2d 1359 (5th Cir. 1990) 14

Dillon v. Numismatic Funding Corp., 231 S.E.2d 629 (N.C. 1977) 5

Ex Parte Phase III Construction, Inc., 723 So.2d 1263 (Ala. 1998) 5

Follette v. Clairol, Inc., 829 F. Supp. 840 (W.D. La. 1993) 5

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) ..... *passim*

Cited Authorities

	Page
Holness v. Maritime Overseas Corp., 251 A.D.2d 220 (N.Y. 1998)	13
IDS Life Insurance Co. v. Sun America Life Insurance Co., 136 F.3d 537 (7th Cir. 1998)	12
Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984)	8, 9
Metroploitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560 (2d Cir. 1996)	12
Nichols v. G.P. Searle Co., 991 F.2d 1195 (4th Cir. 1993)	14
Noonan v. Winston Co., 135 F.3d 85 (1st Cir. 1998)	14
Perkins v. Benguet Mining Co., 342 U.S.437 (1952)	*passim*
Presbyterian University Hospital v. Wilson, 637 A.2d 486 (Md. App. 1994)	5
RAR, Inc. v. Turner Diesel, Ltd., 107 F.3d 1272 (7th Cir. 1997)	11
Replacements, Ltd. v. Midwesterling, 515 S.E.2d 46 (N.C. App. 1999)	5
Woods v. Nova Companies Belize, Ltd., 739 So.2d 617 (Fla. App. 1999).	5, 13, 14

Cited Authorities

Page

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Borchers, Patrick J., *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119 (2001) 9, 19

Brilmayer, Lea, et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721 (1988) 6, 10, 11, 13, 18

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Juenger, Friedrich K., *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141 (2001) 4, 6

Stein, Allan R., *Frontiers of Jurisdiction: From Isolation to Connectedness*, 2001 U. CHI. LEGAL F. 373 (2001) 10, 18

Twitchell, Mary, *Why We Keep Doing Business with Doing Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171 (2001). 4, 6, 10, 16, 17

STATEMENT OF THE INTEREST OF *AMICUS CURIAE*[1]

The DRI is an international organization that includes over 21,000 lawyers involved in the defense of civil litigation. Committed to enhancing the skills, effectiveness and professionalism of defense lawyers, the DRI seeks to address issues germane to defense lawyers and the civil justice system, promote appreciation of the role of the defense lawyer, and improve the civil justice system. The DRI has long been a voice in the ongoing effort to make the civil justice system more fair and efficient. The DRI believes that resolution of the important procedural question presented by this petition will provide greater certainty for entities to formulate their business contacts with a given forum and for litigants, thus, enhancing the judicial system's actual and perceived fairness and efficiency.

The DRI files this Amicus Brief on petitioners' behalf because the issue presented adversely affects the U.S. and foreign business organizations represented by its members. Since the interpretation of current law makes potential exposure to general jurisdiction largely unpredictable, lawyers and business organizations continuously wrestle with this issue. The widespread inconsistency in application of the legal standard by lower courts makes it necessary to regularly defend against assertions of general or "doing business" jurisdiction when the facts do not support it. It is

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1. Pursuant to Supreme Court Rule 37.6, Amicus states that none of the parties or their counsel authored this brief in whole or in part, and no person or entity other than Amicus or counsel made any monetary contribution to the preparation or submission of the brief. Furthermore, pursuant to Supreme Court Rule 37.1, Amicus has refrained from reiterating points argued by petitioners. In particular, Amicus provides the broader policy reasons why this Court should accept this opportunity to clarify the constitutional bounds of general jurisdiction.

further nearly impossible for businesses to plan and execute their contacts with a particular forum and know whether they are subject to general jurisdiction. Uncertainty creates an environment that invites abuse. Personal jurisdiction is often unnecessarily litigated in cases like this one — when application of the current standard would seem to make it unnecessary — a situation that truly harms our system. The facts underlying this purely general jurisdiction case make it an appropriate vehicle through which this Court can further clarify the standard. The DRI, therefore, believes it is crucial that the Court grant certiorari in this case and respectfully requests that the Court consider the viewpoints expressed in this brief when making this decision.

SUMMARY OF ARGUMENT

The Court should grant certiorari in this case because, like many courts, the Illinois court premised its assertion of general jurisdiction on a standard inconsistent with the one articulated in *Perkins v. Benguet Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984). The Illinois court's analysis of general jurisdiction demonstrates how many courts, state and federal, have misunderstood and distorted the standard to the point that the seeming clarity of this Court's holdings has evaporated. A system which confers the broad power of general jurisdiction without clear boundaries violates the due process rights of defendants. The general jurisdiction standards as ambiguously applied by state and federal courts have created forum choice that is neither consistent with due process principals nor necessary to protect plaintiffs. Serious due process concerns and fairness problems are routinely given short shrift after being paid lip service because of the misunderstanding of the factual foundation requisite to exercise general personal jurisdiction. This current doctrinal uncertainty prompts personal jurisdiction challenges when, as in this case, claims against a defendant are unrelated to its

commercial contacts with a particular forum or a defendant has no "presence" there. When businesses, lawyers and their clients are unable to predict with a high degree of certainty what conduct will subject them to general jurisdiction, the judicial system is subject to jurisdictional gerrymandering.

State and federal decisions regarding what contacts are sufficiently substantial to support general jurisdiction have generated a wide chasm between them and *Perkins* and *Helicopteros*. Entities with "contacts" in more than one state lack reasonable notice of where they might be subjected to unlimited jurisdiction because a court will decide that conduct unrelated to the underlying claim was sufficient to be "continuous and systematic." When no one can with confidence effectively know what kinds of contacts might expose them to general jurisdiction in a particular forum, our economic and judicial systems both suffer. Providing as close to a bright-line test as possible is essential to restoring the certainty that fundamental fairness requires.

An intrastate-interstate contacts analysis is consistent with *Perkins* and *Helicopteros* and best addresses the most pervasive problems with general jurisdiction. It defines the quality of contacts necessary and draws the clearest boundaries possible for such broad power. Most importantly, it clarifies that a nonresident defendant must have a measurable instate presence to be subjected to general jurisdiction.

Courts analyze personal jurisdiction so differently that a defendant's risk of being subjected to general jurisdiction in many fora often exceeds any potential benefit actually derived from its contacts. A benefit, even if significant, by itself should not be enough to justify the burden of unlimited jurisdiction unrelated to the conduct that resulted in that benefit. Some courts, such as the Illinois court in this case, seem to apply a standard that is in reality simply a species of specific jurisdiction. Uncertainty encourages forum-shopping and

perpetuates litigation of personal jurisdiction in even the most ordinary cases. This Court should make clear that a measurable presence in a forum, through substantial intrastate contacts, is the only fair and reasonable basis for general jurisdiction.

ARGUMENT

I. THIS CASE DEMONSTRATES IT IS CRUCIAL THAT THIS COURT CLARIFY WHEN A DEFENDANT DOES "CONTINUOUS AND SYSTEMATIC" BUSINESS IN A FORUM SO THAT IT IS SUBJECT TO GENERAL JURISDICTION THERE.

This case raises an important question only this Court can answer: What kinds of "continuous and systematic general business contacts" should subject a nonresident entity to unlimited jurisdictional exposure in a particular forum? General jurisdiction, also known as "dispute-blind jurisdiction," is proper when a defendant "[does] continuous and systematic business in the forum." Mary Twitchell, *Why We Keep Doing Business with Doing Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 172-73 (2001). Courts in a particular forum may then assert jurisdiction over a defendant for any and all kinds of claims asserted against it, regardless of the claim's relationship to the forum. Because of the significant impact on such an entity, such broad authority necessitates a clear standard. As one commentator stated recently, however: "Fifty-six years after *International Shoe* was decided we still do not know when states may assert dispute-blind jurisdiction over non-resident corporations." Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141, 156 (2001).

The "continuous and systematic contacts" or "doing business" analyses currently applied by state and federal courts derive from this Court's opinions in *Perkins* and *Helicopteros*. Courts often claim to only exercise general

personal jurisdiction to the extent it comports with due process and cite *Perkins* and *Helicopteros* for support. Although lower courts use the same words this Court used to support general jurisdiction and purport to follow its precedents, the actual analyses applied and results reached are wholly inconsistent. *See, e.g.*, *Woods v. Nova Companies Belize Ltd.*, 739 So. 2d 617 (Fla. App. 1999) (holding sales of 18% of products to Florida importers, purchases from Florida companies and use of Florida storage facilities sufficient for general jurisdiction); *Replacements, Ltd. v. Midwesterling*, 515 S.E.2d 46 (N.C. App. 1999) (holding business relationship with North Carolina company, phone calls to North Carolina, direct mail to 50 residents, and advertisements there sufficient for general jurisdiction); *Ex parte Phase III Construction, Inc.*, 723 So.2d 1263 (Ala. 1998) (holding sign contract with Alabama company enough to exercise general jurisdiction over Virginia company); *Dillon v. Numismatic Funding Corp.*, 231 S.E.2d 629 (N.C. 1977) (upholding general jurisdiction over a defendant when the company's only North Carolina contacts were 27 sales of coins to residents that totaled approximately $50,000); *Buddensick v. Stateline Hotel, Inc.*, 972 P.2d 928 (Utah App. 1998) (setting out 12 factors courts have considered relevant to whether general jurisdiction exists); *Presbyterian University Hospital v. Wilson*, 637 A.2d 486 (Md. App. 1994) (Pennsylvania hospital's contract to serve Maryland residents in Pennsylvania sufficient for general jurisdiction in Maryland). *But compare Follette v. Clairol, Inc.*, 829 F. Supp. 840 (W.D. La. 1993) (holding exercise of general jurisdiction over corporations with substantial Texas operations was not fair and reasonable where Texas was neither state of incorporation nor principal place of business); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370 (5th Cir. 1987) (holding $250 million in Texas sales over five years through 17 independent Texas dealers insufficient to warrant general jurisdiction where contracts and sales completed in Kansas).

Sale of a product that causes injury within a particular state is a recognized basis for the exercise of specific personal jurisdiction over the seller of that product. General jurisdiction, however, "requires far more extensive contacts between the forum and the individual than does specific jurisdiction." Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 771 (1988). Due process often becomes lost in the translation, which is demonstrated starkly when courts use insignificant conduct within a state as a pretextual basis to assert power over a defendant's conduct outside the state. *See id.* at 739. Court decisions have allowed the nature and role of general jurisdiction to be morphed into a specific jurisdiction analysis through its use in cases related to defendant's interstate contacts with the forum when even specific jurisdiction would be difficult to find. *See* Twitchell, 2001 U. CHI. LEGAL F. at 213-14. It has been suggested that the use of a "doing business" standard has "thoroughly obscured the distinction between dispute-blind and dispute-specific jurisdiction." Juenger, 2001 U. CHI. LEGAL F. at 153.

Due process considerations require justification for the exercise of general jurisdiction. *Helicopteros*, 466 U.S. at 414. "[T]he notion that a state's special relationship with those that have a right to influence state decision-making justifies the assertion of state power over those individuals or entities." Brilmayer, 66 TEX. L. REV. at 726. This Court, in *Perkins*, ruled that an Ohio court had general jurisdiction over a company based on the fact that it had temporarily relocated its headquarters there. *Perkins*, 342 U.S. at 448. In *Helicopteros*, this Court held that a Texas court improperly asserted general jurisdiction over a foreign company that had only negotiated sales, purchased helicopters and attended training in Texas. *Helicopteros*, 466 U.S. at 418. Lower courts, like the Illinois Court in this case, often assert general jurisdiction over defendants without the necessary special relationship established through actual presence in the forum, as in *Perkins*. The "continuous and systematic contacts" or

"doing business" standard is often reshaped to facilitate general jurisdiction over companies that do business in many states or in neighboring states without proper consideration of the quality and nature of the contacts in that forum. A presumption of due process and fundamental fairness is inappropriate simply because an organization is large or geographically close to the forum.

Here, petitioners do significant business in Indiana, just across the Illinois border, but not in Illinois. Further, none of the petitioners have a place of business in Illinois. General jurisdiction requires continuous and systematic contacts within the state so significant that they would expect to be required to appear in an Illinois court for any and all claims irrespective of the fact that the claim itself had no nexus with Illinois. Petitioners' sale of electricity produced in Indiana to an Illinois company, although not insubstantial in terms of revenue, does not constitute this kind of contact. It is clear that petitioners did not engage in "continuous and systematic" actions within the state of Illinois. Rather, they entered into a contract to deliver power produced in Indiana to a single business in Illinois. The underlying claim is for personal injuries from an accident that occurred in Indiana at a facility owned and operated by an Indiana company. The facts show no direct relationship between petitioners and the state of Illinois, yet the Illinois court ruled it has unlimited jurisdiction over petitioners due to their "continuous and systematic" sales of electricity to an Illinois company because this contact affects interests in Illinois. *Alderson v. Southern Co.*, 747 N.E.2d 826, 947-48 (2001). The court also concluded that due to this "continuous and systematic" contact it is reasonable to expect petitioners to defend any lawsuit brought there. *Id.* The standard applied and result reached are not only inconsistent with *Perkins* and *Helicopteros*, but also fail to properly address the due process concerns that attend any exercise of general jurisdiction over a nonresident defendant.

II. STATE AND FEDERAL COURTS HAVE STRETCHED THE BROAD "CONTINUOUS AND SYSTEMATIC GENERAL BUSINESS CONTACTS" STANDARD BEYOND ITS CONSTITUTIONAL LIMITS.

This Court held in *Helicopteros* that, to satisfy due process, a state can only assert general jurisdiction over a nonresident corporate defendant with "the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416. In *Perkins*, an Ohio court properly asserted general jurisdiction over a corporation in a shareholder's action seeking dividends and damages for failure to issue stock certificates because it carried out "a continuous and systematic, but limited, part of its general business" in Ohio *and* "the business done by the corporation in Ohio was sufficiently substantial and of such a nature as to permit Ohio to entertain the cause of action against it." *Perkins*, 342 U.S. at 447. The "business done" in Ohio included the direction of company activities from an Ohio office, directors' meetings, file storage, business correspondence, banking, stock transfers, payment of salaries, and purchases of machinery. *Perkins*, 342 U.S. at 447-48. In *Helicopteros*, a Texas court had asserted general jurisdiction over a Colombian company but since its most substantial business contacts with Texas were sales negotiations, the purchase of helicopters and equipment, and pilot training, this Court found these were not the same kind of contacts present in *Perkins*, and, therefore, were insufficient to satisfy due process. *Helicopteros*, 466 U.S. at 416.

The same year, in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), this Court remarked that the sale of 10,000 to 15,000 magazines per month in New Hampshire "may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities." *Keeton*, 465 U.S. at 779. This was dicta in *Keeton*, a libel action that arose from the defendants' sale of magazines in New Hampshire, which support exercise of specific personal jurisdiction.

Keeton, 465 U.S. at 779-80. As an example, if Hustler Magazine, Inc. were a corporation organized under the laws of Delaware and domiciled in New York, would it comport with due process to permit a former employee who worked only in the state of New York to bring a wrongful termination claim in New Hampshire. Under controlling legal authority, the answer should be no. Like the facts here, the specific contact is not of the degree, nature or quality that should make a business entity subject to suit for any conceivable claim that could be brought against it. It exceeds the scope of *Perkins* and *Helicopteros*, therefore, to "allow jurisdiction based solely upon unrelated sales or purchases in the forum, or advertising in the forum, or the fact that defendant's web page is accessible in the forum, or any of the other actions that [some would argue] loosely fit under the heading of 'doing business' in the forum." Patrick J. Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 137 (2001). Surely this approach limits a potential defendant's exposure to the exercise of general jurisdiction, but that is exactly what due process requires.

Problems do not exist with assertion of general jurisdiction based on domicile, place of incorporation or principal place of business. Rather, it is the inconsistent interpretation of what constitute "continuous and systematic general business contacts" which is the troubling issue presented by this case. Courts may, as did the Court below, find sufficient contacts with the state but fail to seriously address "whether the exercise of jurisdiction comports with traditional notions of fair play and substantial justice." *Helicopteros*, 466 U.S. at 414. Here, the court below concluded that substantial sales to a company in Illinois and close proximity to Illinois, without more, were enough to satisfy due process. Despite the use of the right language, this clearly appears to be a specific contact-based analysis, which is inappropriate in a general jurisdiction case. It is clear from *Perkins* and *Helicopteros* that more is required.

Although a careful reading of *Perkins* and *Helicopteros* shows that general jurisdiction requires substantial instate contacts, this has not been the uniform approach in the courts. In fact, there is no identifiable uniform substantive analysis. The standard articulated in *Perkins* and *Helicopteros* seems one that requires contacts substantial enough to create a direct relationship with the state or the equivalent of the relationship an organization has with its state of domicile, incorporation or principal place of business. *See* Twitchell, 2001 U. CHI. LEGAL F. at 177; Brilmayer, 66 TEX. L. REV. at 742. A presence-based standard, rather than the effects-based standard applied by the Illinois court in the present case, limits the risk that numerous states will assert authority over the same activity. Allan R. Stein, *Frontiers of Jurisdiction: From Isolation to Connectedness*, 2001 U. CHI. LEGAL F. 373, 388-89 (2001). A jurisdictional analysis that focuses on the effect of a defendant's activities in the state rather than the quality of its relationship with the state is appropriate to determine specific, but not general, jurisdiction. All too often, as in this case, courts assert general jurisdiction because a defendant's contacts with the state are "continuous and systematic" in number and duration or because its contacts have some in-state effect. This alleged "effect"-based approach can be result driven. Rather, some identifiable and measurable physical presence and activity within state must be shown so as to unambiguously comport with due process requirements for general jurisdiction. A defendant would know then that it could be haled into court there. This is the most appropriate factual and legal foundation for finding general jurisdiction.

Since the premise of personal jurisdiction is the notion that a state's courts should be permitted to assert jurisdiction over corporations and individuals present there, intrastate, rather than interstate contacts must necessarily be the focus of general jurisdiction analysis. This Court, in fact, has only upheld general jurisdiction where the defendant had significant intrastate contacts. *Compare Helicopteros*, 416-18 *with Perkins*, 342 U.S. at 448-49. Solicitation of sales or

distribution of products from out of state, for example, are interstate activities while local manufacturing or management offices are intrastate activities. Brilmayer, 66 TEX. L. REV. at 744. The commentator who suggested this approach bases it on the two strands of the dormant commerce clause doctrine: "the protection of free trade between the states," and "preventing state discrimination against interstate trade." *Id.* at 745. Thus, courts should evaluate a defendant's intrastate contacts and ignore purely interstate contacts to avoid any undue burden on interstate trade caused by assertions of general jurisdiction based solely on interstate contacts. *Id.* at 747-48. In this case, therefore, the court could not exercise general jurisdiction because petitioners' only claimed "continuous and systematic general business contact" with Illinois is interstate — sale of electricity produced in Indiana by nonresident companies to an Illinois company for subsequent sale to Illinois residents.

An analysis that focuses on substantial intrastate contacts not only protects interstate commerce, but also addresses the due process concerns that arise from assertions of unlimited jurisdiction over nonresidents. "[D]ue process requires that potential defendants have some measure of control and warning regarding where they may be haled into court, and the clearer and more predictable we can make jurisdictional rules, the better that interest is served." *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1280 (7th Cir. 1997). Here, petitioners subjected to general personal jurisdiction in Illinois had chosen to do business in Indiana and produce electricity in Indiana rather than Illinois. While all may have expected to be subject to specific personal jurisdiction if their conduct in selling electricity to an Illinois company harmed someone in Illinois, in turn they had no notice that they would be treated like an Illinois company and haled into Illinois court for unrelated claims brought against them, regardless of the nature and complete lack of nexus with their limited Illinois contacts. But the court did not consider this aspect of the due process analysis.

The Seventh Circuit has aptly defined general jurisdiction as reaching

> those nonresident businesses that are so like resident businesses, insofar as the benefits they derive from state services are concerned, that it would give them an undeserved competitive advantage if they could escape having to defend their actions in the local courts. . . . A firm that has no offices or sales in Illinois is not much like a resident firm and so is not within the reach of the statute.

IDS Life Insurance Co. v. Sun America Life Insurance Co., 136 F.3d 537, 540-41 (7th Cir. 1998). This substantive definition is consistent with the standard articulated by this Court in that it reflects the kind of contacts that were found sufficient in *Perkins* but not in *Helicopteros*. Under the *Perkins* standard, sales alone are not sufficient without offices or some similar presence in the state.

The Second Circuit has applied a two-part test to determine general jurisdiction: (1) whether the nonresident defendant's contacts are "continuous and systematic"; and (2) if so, whether "the exercise of jurisdiction comports with 'traditional notions of fair play and substantial justice' " under the five factors articulated by this Court in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113-14 (1987). *Metropolitan Life Insurance Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567-68 (2d Cir. 1996). The court has also pointed out that "every circuit that has considered the question has held, implicitly or explicitly, that the reasonableness inquiry is applicable to *all* questions of personal jurisdiction, general or specific." *Id.* at 573. The First, Fifth, Sixth, Eighth, and Ninth Circuits have all applied some reasonableness factors after finding "continuous and systematic" business contacts. *See id.* This version of the test reflects the standards articulated in *Perkins* and *Helicopteros*, however, it fails to sufficiently define "continuous and systematic contacts."

Generally it is understood that even if a state is not a company's principal place of business or place of incorporation, substantial instate activities, although unrelated to particular litigation, may justify general jurisdiction because it is effectively a "local company." *See* Brilmayer, 66 TEX. L. REV. at 742. New York has defined its standard as follows:

> A foreign corporation is amenable to suit in New York courts under CPLR 301 if it has engaged in such a continuous and systematic course of "doing business" here that a finding of its "presence" in this jurisdiction is warranted. . . . The essential factual inquiry is whether the defendant has a *permanent and continuous presence* in the state, as opposed to merely occasional or casual contact with the state.

Holness v. Maritime Overseas Corp., 251 A.D.2d 220, 222 (N.Y. 1998) (emphasis added). This standard focuses on the nature and quality of the defendant's instate contacts rather than the quantity of general contacts with the state. Such a standard is somewhat similar to the intrastate-interstate test, but the terms "continuous and systematic" and "doing business" must be given form and focus through a substantive definition. Essentially, this simple standard is the same as being present for all purposes in the state. It is fair, clear, predictable, and comports with due process requirements.

Florida law is similar, emphasizing contacts *within the state*, but allows jurisdiction over companies that have wholly *interstate* contacts, such as buying products from or selling some of its products to companies in the state: "A defendant who is engaged in *substantial* and not isolated activity *within* this state, whether such activity is *wholly interstate*, intrastate, *or otherwise*, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." *Woods v. Nova Companies Belize Ltd.*, 739 So.2d 617, 620 (Fla. App. 1999) (emphasis added) (quoting § 48.193(2), Fla. Stat. (1995)).

The Florida court in *Woods* decided "substantial" minimum contacts existed and effectively stopped there. *Id.* at 620. These were primarily interstate activities, including the sale of products to and purchase of products from Florida companies. So any company that buys products from and sells products to Florida companies is subject to general jurisdiction there. This Court's decisions, however, show that due process requires much more.

The First, Fourth, Fifth, and Eleventh Circuit Courts of Appeals have held that sales and purchases unrelated to the claims in a case, even if substantial, are not enough to subject an organization to general jurisdiction. *See Associated Transport Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A.*, 197 F.3d 1070, 1075 (11th Cir. 1999); *Noonan v. Winston* Co, 135 F.3d 85, 93-94 (1st Cir. 1998); *Nichols v. G.D. Searle Co.*, 991 F.2d 1195, 1198 (4th Cir. 1993); *Dalton v. R & W Marine, Inc.*, 897 F.2d 1359, 1362 (5th Cir. 1990). To the contrary, in this case, the Illinois court held that the long-term sales of electricity to an Illinois company is a sufficient "continuous and systematic business contact that support[s] the assertion of general jurisdiction over them." *Alderson*, 747 N.E.2d at 947. The court went on to hold that it was "fair, just and reasonable" for petitioners to expect to defend an action in Illinois because they have "substantial connections with Illinois" *Id.* at 948. Specifically, the court said "[petitioners] have engaged in economic activities which have a substantial effect upon interests located in Illinois." *Id.* So the court applied an effects-based test, which is appropriate for specific jurisdiction, but inconsistent with the general jurisdiction standard articulated by this Court.

Recently, a Utah appellate court surveyed state and federal decisions and summarized factors applied to determine general jurisdiction. *Buddensick*, 972 P.2d at 930-31. It identified 12 general business contacts relevant to general jurisdiction, but did not find any one factor dispositive:

1. engaged in business in this state;

2. licensed to do business in this state;

3. owning, leasing, or controlling property (real or personal) or assets in this state;

4. maintaining employees, offices, agents, or bank accounts in this state;

5. present in that shareholders reside in this state;

6. maintaining phone or fax listings within this state;

7. advertising or soliciting business in this state;

8. traveling to this state by way of salespersons, etc.;

9. paying taxes in this state;

10. visiting potential customers in the state;

11. recruiting employees in the state;

12. generating a substantial percentage of its national sales through revenue generated from in-state customers.

Id. at 930-31. The defendant company in the case owned a casino located on the state line between Nevada and Utah. The parking lot was on Utah land, but the claim arose from a slip-and-fall in the casino restaurant on Nevada land. The Utah court determined that the corporation was subject to general jurisdiction there because it conducted extensive advertising and promotional activities in Utah, leased and possessed real property in Utah (parking lots), contracted for goods and services with Utah companies, and had two phone numbers, two post office boxes and six fax numbers there. *Id.* at 931. This analysis is more consistent with that of *Perkins*, but still exhibits ambiguity

regarding the nature and quality of "continuous and systematic" contacts required to exercise general jurisdiction. Furthermore, the court seems to simply add up the defendant's contacts and gives scant attention to the reasonableness aspect of the analysis when it concludes that, based on the number of contacts, the defendant could reasonably expect to be haled into a Utah court. It is arguable under the facts that a specific jurisdiction analysis would have been more appropriate.

Importantly, the specific jurisdiction analysis raised by the facts but not addressed by the court in the Utah case does not exist here, which makes it an ideal case through which this Court may further clarify the general jurisdiction standard. The most important difference is that respondents' personal injury claims have no connection to petitioners' contacts with Illinois. So this is a pure general jurisdiction case.

Significantly, a key rationale for contacts-based jurisdiction is that a defendant who conducts substantial activities within a state derives such benefits from the state that it is proper to hold it accountable to the state's courts. *See* Twitchell, 2001 U. CHI. LEGAL F. at 174-75. In other words, the defendant should be treated as an "insider." *Id.* The analyses advanced by this Court require the kind of contacts that would put a defendant on notice that it could expect to be treated like a local business or resident based on the benefits of doing business there. Courts that deem "substantial minimum contacts" enough to satisfy due process in a general jurisdiction case fail to recognize this essential element. One commentator has aptly summarized the problem as follows:

> By relying solely on a finding of "continuous and systematic contacts" and the reciprocal benefits justification, without further exploring the question of whether this defendant should be regarded as an "insider," courts are applying a

> theory that makes perfect sense in the context of specific jurisdiction and extending it to general jurisdiction without carefully examining the wisdom of that extension.

Twitchell, 2001 U. CHI. LEGAL F. at 176. Courts have used the "substantial minimum contacts" or "doing business" standard that has evolved from *Perkins* and *Helicopteros* to exercise general jurisdiction over defendants that derive little benefit from their contacts with the forum relative to the burden of unlimited jurisdictional exposure there. *See* Twitchell, 2001 U. CHI. LEGAL F. at 175-76. It seems, then, that any clarification of the standard must address what amount of instate activity makes a company an "insider" so that it comports with due process to subject it to general jurisdiction. Twitchell, 2001 U. CHI. LEGAL F. at 187-88.

III. A CLARIFICATION FROM THIS COURT IS NECESSARY TO CURTAIL FORUM-SHOPPING AND LIMIT WASTEFUL LITIGATION.

This is a typical case arising from work-related personal injuries, yet the litigation over personal jurisdiction has lasted more than three years. It exemplifies the expensive and time-consuming litigation created when plaintiffs use general jurisdiction to shop for the most favorable forum which happens when courts are permitted to shape the "continuous and systematic contacts" to fit the "needs" of the case. Assertion of general jurisdiction over a nonresident defendant who has done little or no intrastate business is commonplace. Personal jurisdiction challenges should arise only in unusual circumstances, but this and many other cases demonstrate this is not true. *See* Christopher D. Cameron & Kevin R. Johnson, *Death of a Salesman? Forum Shopping & Outcome Determination under International Shoe*, 28 U.C. DAVIS L. REV. 769, 835-36 (1995).

Forum-shopping is inevitable in a system where research has shown "the party who won the forum-shopping battle won on the merits in almost 90% of the cases." Cameron, 28 U.C. DAVIS L. REV. at 820-21. This statistic amplifies the importance of general jurisdiction. As is widely recognized, "[General jurisdiction] permits plaintiffs to obtain the upper hand by shopping for the most favorable forum." Stein, 2001 U. CHI. LEGAL F. at 384. Plaintiffs may also use general jurisdiction to "chase defendants to their home states." Brilmayer, 66 TEX. L. REV. at 725. Our system suffers greater harm each time the lack of a definitive and uniform standard for general jurisdiction allows plaintiffs to manipulate choice-of-law by selecting a forum unrelated to the controversy and where the defendant is not present. Whether plaintiffs are in search of a more sympathetic jury, a longer statute of limitations, different discovery rules, or more generous contingency fees, the current state of the law unfortunately permits the manipulation of general jurisdiction by litigants and courts. *See id.* The monetary cost to our economic and legal systems is significant. Further, it undermines faith in our judicial system's fundamental fairness, which has its own social costs.

Businesses that provide products or services to corporate or individual residents of several states, whether by contract, through independent retail outlets, mail order, or a website, do not currently have reasonable notice of where they may be subject to general jurisdiction. This situation is fundamentally unfair. To a larger degree, it depends on the luck of the draw in the forum plaintiff has chosen. Petitioners in this case had no notice that they would be subject to general jurisdiction in Illinois. The Illinois courts ruled that exercise of general jurisdiction is proper because of petitioners' "continuous and systematic" sales of electricity to an Illinois company because this contact affects interests in Illinois and it is, therefore, reasonable to expect petitioners to defend a lawsuit brought there. *Alderson*, 747 N.E.2d at 947-48. Such a result is

impermissible under *Perkins* and *Helicopteros* and only invites forum-shopping and overly broad assertions of and exercise of general personal jurisdiction that exceed the constitutional bounds of due process.

The current uncertainty regarding general jurisdiction weighs heavily against the commercial defendant who cannot be reasonably sure how a court will construe its contacts with a forum. A clear line must be drawn. As one commentator has suggested, jurisdictional standards should "[allow] plaintiffs to select some reasonable forum, in which all of the parties can be gathered, and reasonably [restrict] the number of available fora." Borchers, 2001 U. CHI. LEGAL F. at 138. Although defendants may respond with a venue challenge or invoke the doctrine of *forum non conveniens*, the lack of a uniform analysis creates a real risk of due process violations, and wastes the time and resources of both courts and litigants with unnecessary jurisdictional battles in ordinary cases. *See* Cameron, 28 U.C. DAVIS L. REV. at 835-36. This Court can draw the necessary bright line in this case so that this critical issue is resolved with the necessary certainty.

CONCLUSION

The Illinois court asserted general jurisdiction over nonresident corporate defendants whose only contacts with Illinois involved the sale to an Illinois company of power produced in Indiana. Although arguably "continuous" it was not of the nature, quality and degree to be considered systematic. Systematic should connote intrastate contacts and it should be so defined. A nonresident defendant cannot be subjected to unlimited jurisdiction in a particular forum where the contact is solely interstate and because it is inherently not of the nature, quality or degree necessary to meet constitutional due process requirements. The Illinois courts, like other state and federal courts, have wielded the broad power of general jurisdiction with an inappropriate

regard for constitutional rights of the defendant and without a clear standard. Sound judicial policy demands a clear rule so that all may now know.

The result in this case cannot be reconciled with *Perkins* or *Helicopteros*. The standard actually applied by the courts in Illinois would be appropriate in a specific jurisdiction case if the injury resulted from the specific contact with the state. It did not. Such inconsistency and uncertainty harms not only the business organizations subject to general jurisdiction, but also seriously undermines the fairness and efficiency of our system and ignores the due process required under the U.S. Constitution. Business organizations must be able to reasonably and rationally know when and where they will be subject to general jurisdiction. Without the Court's intervention, the current situation results in needless litigation and the often unconstitutional exercise of general personal jurisdiction.

The general jurisdiction standard articulated by *Perkins* and *Helicopteros* clearly requires substantial intrastate contacts. Interstate contacts such as sales and purchases are not the kind of "continuous and systematic general business contacts" found in *Perkins*. Moreover, an analysis which separates interstate from intrastate contacts draws clear boundaries and most effectively addresses the constitutional concerns that attend the assertion of general jurisdiction over a nonresident defendant. Those who are true "insiders" due to their direct relationship as defined by their presence in a forum will expect to be so treated and have reasonable notice that they are subject to suit there by all for all possible claims.

For all of the foregoing reasons, therefore, the DRI respectfully requests that this Court grant the Petition for Writ of Certiorari to answer the persistent and important jurisdictional question presented in this case: What kinds of "continuous and systematic general business contacts" should subject an organization to unlimited jurisdictional exposure in a particular forum?

Respectfully submitted,

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No. 01-1200

In the Supreme Court of the United States

SOUTHERN COMPANY, ET AL.,

Petitioners,

v.

RICHARD T. ALDERSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Illinois Court of Appeals, First District

BRIEF OF DAIMLERCHRYSLER AKTIENGESELLSCHAFT AS *AMICUS CURIAE* SUPPORTING PETITIONER AND SUGGESTING THAT THE PETITION BE HELD FOR, OR GRANTED TOGETHER WITH, THE PETITION IN NO. 01-929

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14 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICUS CURIAE* 1

ARGUMENT 3

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases:

Albertson's Inc. v. *Kirkingburg*, 527 U.S. 555 (1999) 9

Asahi Metal Industry Co. v. *Superior Court of California*, 480 U.S. 102 (1987) 3, 4

Cannon Mfg. Co. v. *Cudahy Packing Co.*, 267 U.S. 333 (1925) 6

Calcano-Martinez v. *INS*, 533 U.S. 348 (2001) 9

Helicopteros Nacionales de Colombia, S.A. v. *Hall*, 466 U.S. 408 (1984) 4

INS v. *St. Cyr*, 533 U.S. 289 (2001) 9

Murphy v. *United Parcel Service, Inc.*, 527 U.S. 516 (1999) 9

Sutton v. *United Air Lines, Inc.*, 527 U.S. 471 (1999) 9

United States v. *Bestfoods*, 524 U.S. 51 (1998) 6

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) 3

Statute:

28 U.S.C. § 1332(a)(2) 4

Miscellaneous:

Brief *Amici Curiae* of the Chamber of Commerce of the United States, the Organization for International Investment, and the National Association of Manufacturers in Support of Petitioner, *DaimlerChrysler AG* v. *Olson*, No. 01-929 (filed Feb. 1, 2002) 2, 3, 4

Brief for the United States as *Amicus Curiae* Supporting Petitioner, *Chase Manhattan Bank* v. *Traffic Stream (BVI) Infrastructure Ltd.*, No. 01-651 (filed Nov. 23, 2001) 4

Petition for a Writ of Certiorari, *DaimlerChrysler AG* v. *Olson*, No. 01-929 (filed Dec. 19, 2001) ..... *passim*

Petition for a Writ of Certiorari, *McInnis* v. *Daniel*, No. 01-1290 (filed Mar. 4, 2002) 8, 9, 10

Reply Brief for Petitioners, *McInnis* v. *Daniel*, No. 01-1290 (filed April 16, 2002) 9, 10

BRIEF OF DAIMLERCHRYSLER AKTIENGESELLSCHAFT AS *AMICUS CURIAE* SUPPORTING PETITIONER AND SUGGESTING THAT THE PETITION BE HELD FOR, OR GRANTED TOGETHER WITH, THE PETITION IN NO. 01-929

INTEREST OF THE *AMICUS CURIAE*[1]

Amicus DaimlerChrysler Aktiengesellschaft ("DaimlerChrysler AG") is the petitioner in *DaimlerChrysler AG* v. *Olson*, No. 01-929 (petition for certiorari filed Dec. 19, 2001). That case, like this one, raises an important question concerning the limits imposed by the Due Process Clause of the Fourteenth Amendment on the power of state courts to exercise "general" *in personam* jurisdiction over a nonresident corporate defendant. The petitioners in this case have filed an *amicus* brief in No. 01-929 urging the Court to hold No. 01-929 and consider it together with this case. Apparently agreeing that the two cases should be considered together, this Court has taken No. 01-929 off of the April 19, 2002, conference for which it was scheduled. Petitioners also contend in their *amicus* brief in No. 01-929 that this case is a better vehicle for clarifying the due process limits on general jurisdiction. DaimlerChrysler AG files this brief to explain its contrary view.

DaimlerChrysler AG has a substantial interest in ensuring that, if this Court concludes that review is warranted in only one of these two cases, review is granted in No. 01-929 rather than in this case. The reason is straightforward: the Texas Court of Appeals in No. 01-929 relied on several different considerations in upholding the assertion of general jurisdiction. In this case, according to petitioners, the Illinois Court of Appeals in contrast

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[1] Pursuant to Rule 37.6, DaimlerChrysler AG states that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than *amicus curiae* and its counsel, has made a monetary contribution to the preparation or submission of this brief.

relied on a much simpler analysis implicating only one of the considerations deemed important by the Texas Court of Appeals. Accordingly, there is no guarantee, if this Court were to grant this case and hold No. 01-929 (rather than vice versa), that the Texas Court of Appeals would reach a different result following a reversal and remand in this case. The Texas Court of Appeals, after all, went out of its way to scour the record for materials never even cited by the respondents in No. 01-929, and to rely on arguments respondents never made below, in order to reach the result desired by that court. Any court that would go to such lengths to reach a particular result is unlikely, we submit, to change its mind when one of multiple grounds for its decision is disallowed.

Moreover, even beyond this case, DaimlerChrysler AG has a substantial interest in ensuring that this Court reach, and resolve, several subsidiary issues that are raised in No. 01-929 but absent from this case. For example, the Texas Court of Appeals relied, in part, on the maintenance of a passive website that provided basic information about the company and its products, and allowed users anywhere in the world to send and receive email communications, but was not in any way specifically directed toward Texas consumers or used to transact sales of products to Texas residents. It also relied on Daimler-Benz AG's efforts to vindicate its federally protected trademark rights in federal court. And the Texas Court of Appeals completely disregarded the separate corporate existence of an indirect U.S. subsidiary (even though the parties stipulated that the entities were separately operated). Each of these holdings will threaten DaimlerChrysler AG – and scores of other non-U.S. corporations – with adverse effects if left uncorrected by this Court. For precisely that reason, three national and international organizations representing the business community have asked this Court to grant review in No. 01-929 to resolve issues that are *not* raised in this case. See No. 01-929 Brief *Amici Curiae* of the Chamber of Commerce of the United States, the Organization for International Investment, and the National Associa-

tion of Manufacturers in Support of Petitioner, at 3, 5-12. This Court should grant that request.[2]

ARGUMENT

1. DaimlerChrysler AG wholeheartedly agrees with petitioners that "the permissible scope of general jurisdiction" under the Due Process Clause is a "recurring and important" question "on which this Court's guidance is unquestionably needed." Pet. 5; see also *id.* at 15-16 & n.10; Petition for a Writ of Certiorari, *DaimlerChrysler AG* v. *Olson*, No. 01-929, at 9-12 & n.3 (filed Dec. 19, 2001) ("No. 01-929 Pet."). Equally unassailable is petitioners' submission and showing (Pet. 15-24) that the state and federal courts are deeply divided over how to define the due process limits on general jurisdiction. See also No. 01-929 Pet. 12-24. The Court should grant review in at least one case raising a general jurisdiction issue to resolve the conflict in the lower courts and provide much-needed guidance in this important area of law.

DaimlerChrysler AG also agrees that the "[v]ague and expansive conceptions of general jurisdiction" employed by some lower courts "have produced highly damaging consequences." Pet. 24; see also *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980) (rejecting mode of jurisdictional analysis that would seriously undermine the "degree of predictability to the legal system" that is necessary to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where the conduct will and will not render them liable to suit") (internal quotations omitted). Moreover, in cases (such as *DaimlerChrysler AG* v. *Olson*) involving *non-U.S.* corporations forced to submit to the general jurisdiction of a U.S. State, the adverse consequences may include harm to "the Federal interest in Government's foreign relations policies." *Asahi Metal Industry Co.* v. *Superior Court*

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[2] We have filed with the Clerk letters from counsel to the parties consenting to the filing of this brief.

of California, 480 U.S. 102, 115 (1987). See also No. 01-929 Pet. 22-24; cf. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 425 n.3 (1984) (Brennan, J., dissenting) (noting Solicitor General's concern that broad interpretation of general jurisdiction would cause foreign companies to refrain from making purchases in the United States).[3]

DaimlerChrysler AG also agrees with petitioners that the decision below is egregiously wrong. Here, as in *DaimlerChrysler AG* v. *Olson*, an intermediate state appellate court has upheld the assertion of general *in personam* jurisdiction over a nonresident corporation that lacked all of the traditional indicia of "presence" within the forum State. See Pet. 12; see also No. 01-929 Pet. 3, 4, 6, 8. Petitioners' "contacts" with Illinois do not even remotely approach the kind of "continuous and systematic" activities within the forum that are required before general jurisdiction may be asserted consistent with the Due Process Clause. See No. 01-929 Pet. 5-6, 25-28.

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[3] In *Chase Manhattan Bank* v. *Traffic Stream (BVI) Infrastructure Ltd.*, No. 01-651 (cert. granted Jan. 4, 2002; argued April 17, 2002), the Solicitor General filed an *amicus* brief urging this Court to grant review in order to decide whether the alienage diversity statute, 28 U.S.C. § 1332(a)(2), which confers jurisdiction on the federal courts over disputes between U.S. citizens and "citizens or subjects of a foreign state," covers suits brought by corporations that are organized under the laws of a United Kingdom overseas territory. That issue, the federal government explained, has "significant foreign policy ramifications" and may influence whether "foreign nations * * * afford United States citizens reciprocal" treatment in "foreign courts." No. 01-651 U.S. Br. 2 (petition stage). The same is true in cases such as *DaimlerChrysler AG* v. *Olson*. In fact, the potential harm to foreign policy interests may be even greater in the latter context, at least where (as in *DaimlerChrysler AG* v. *Olson*) a state court in upholding jurisdiction gives short shrift to the competing policy interests of a foreign nation. See No. 01-929 Pet. 24; see also No. 01-929 Brief *Amici Curiae* of the Chamber of Commerce of the United States, the Organization for International Investment, and the National Association of Manufacturers in Support of Petitioner, at 10 ("International 'reciprocity' also poses risks to U.S. businesses, as courts of other countries could well follow the Texas example and begin to subject U.S. companies to suits in foreign jurisdictions on the thinnest of grounds.").

2. *Amicus* disagrees, however, with petitioners' argument – advanced in an *amicus* brief they filed in *DaimlerChrysler AG* v. *Olson*, No. 01-929 – that this case is a superior vehicle to No. 01-929 for clarifying the due process limits on general jurisdiction and that the Court therefore should grant review in this case while holding No. 01-929 pending the disposition here.

a. According to petitioners, the Illinois Court of Appeals' decision they ask this Court to review is unusual in that "courts that assert general jurisdiction typically do so by concatenating a large number of contacts and concluding that in combination they are sufficient to establish general jurisdiction." Pet. 5. Here, petitioners say, the lower court upheld the assertion of general jurisdiction "for one reason alone: because the bulk of the output of the plant [located on the Illinois-Indiana border] where the accident occurred was sold – in Indiana – to an Illinois firm." *Ibid.*

Accepting petitioners' interpretation of the decision below, the simplicity of the lower court's rationale makes this case a *less* desirable vehicle for resolving the widespread doctrinal confusion in the area of general jurisdiction. A decision to *reverse* in this case would do little more than disallow an extreme example of jurisdictional overreaching by the state courts. Although a decision to *affirm* in this case would have a far-reaching effect (by effectively removing all meaningful constitutional limits on the exercise of general jurisdiction), that outcome is highly unlikely. By contrast, a decision to *reverse* in No. 01-929 – which the petitioners here have said is the correct outcome – would go far toward clarifying the law of general jurisdiction by demonstrating that even the combination of factors invoked by the Texas Court of Appeals is an insufficient basis for general jurisdiction.

Nor is this all. Even a decision to *affirm* in No. 01-929 would offer valuable opportunities, missing from this case, to clarify the law of personal jurisdiction. For example, *DaimlerChrysler AG* v. *Olson* raises the issue of how courts should evaluate Internet "contacts" as part of the "minimum contacts"

inquiry. See No. 01-929 Pet. 15-17. That extremely important and timely issue, on which the lower courts are sharply divided, could not be resolved if the Court follows the petitioners' advice and grants review in this case while holding No. 01-929. The same is true of the important threshold issue of what standard should apply to imputing the "contacts" of one corporation to its corporate affiliate. As we have explained (No. 01-929 Pet. 18-22), some lower courts have applied the strict federal common law standard articulated in *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333 (1925), in conducting this federal due process inquiry; other courts have employed state-law "alter ego" principles in deciding whether to pierce the corporate veil; and the Texas Court of Appeals applied yet a third approach to the issue of attribution. See also *United States* v. *Bestfoods*, 524 U.S. 51, 63 n.9 (1998) (taking note of, but declining to resolve because the issue was "not presented in this case," the "significant disagreement among courts and commentators over whether, in enforcing CERCLA's indirect liability, courts should borrow state law, or instead apply a federal common law of veil piercing").[4]

With respect to these and other threshold legal questions raised in No. 01-929 but not in this case, the Court ordinarily would resolve them before proceeding to weigh *all* of the relevant "contacts" together to decide whether the constitutional threshold is reached. Petitioners' argument overlooks this first step in the analysis as well as the opportunities it offers to resolve pervasive, purely legal conflicts in the lower courts.[5]

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[4] To be sure, this case also presents an important threshold question of doctrine on which the lower courts are sharply divided: whether the "stream of commerce" theory may be used as a basis for asserting *general* jurisdiction (or is instead limited to specific jurisdiction cases). See Pet. 23. But that issue is *also* squarely presented in *DaimlerChrysler AG* v. *Olson*. See No. 01-929 Pet. 6, 12-14.

[5] Petitioners say that "[m]ulti-factor cases * * * are seldom well suited for this Court's review" (Pet. 5), but, of course, virtually *all* of this Court's specific and general jurisdiction cases have involved multiple contacts

This Court should not pass up the valuable opportunity to resolve at least some of the threshold doctrinal conflicts in No. 01-929 by granting this case instead.[6]

Finally, petitioners' argument proceeds on the flawed assumption that DaimlerChrysler AG's principal argument in No. 01-929 is that the Texas Court of Appeals gave undue weight, in the aggregate, to the various considerations it relied on in upholding general jurisdiction. In fact, *amicus*'s primary argument is that most if not all of the *individual* factors cited by the Texas Court of Appeals – maintenance of a passive website not specifically directed towards Texas consumers; enforcement of federal trademark rights by filing a federal lawsuit; and owning a separately operated indirect subsidiary – are *legally irrelevant* to the general jurisdiction calculus.

b. Petitioners also suggest that this case is a better vehicle because it involves U.S. rather than foreign corporations. See Pet. 16. We respectfully submit that the difference cuts in the opposite direction. Whatever their relevance to the legal analysis, the foreign policy implications of allowing the decision in No. 01-929 to stand surely make it a more, not less, urgent candidate for this Court's review. See note 3, *supra*.

Analytically, moreover, this difference is relevant not to the "minimum contacts" analysis but rather to the logically sub-

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between the defendant and the forum. Indeed, that would seem to be a natural consequence of the "minimum contacts" test itself (and of the multiple-factor tests traditionally employed for evaluating "fair play and substantial justice").

[6] At the end of the day, the petitioners here appear to believe that No. 01-929 involves *too many* certworthy issues to warrant the Court's review. But, of course, this Court retains discretion *not* to reach and resolve every subissue raised in a particular case (although DaimlerChrysler AG would certainly urge the Court to reach enough issues to allow definitive rejection of Texas's assertion of jurisdiction). That possibility, and the attendant flexibility it brings, make No. 01-929 an especially attractive candidate for this Court's review.

sequent issue of "fair play and substantial justice." See No. 01-929 Pet. 22-24. Petitioners do not explain why the determination whether a nonresident corporation has engaged in "continuous and systematic" activities inside of Illinois might hinge in some fashion on whether the company is incorporated in Georgia or Mexico.[7]

3. DaimlerChrysler AG also wishes to bring this Court's attention to the pending petition for certiorari in *McInnis* v. *Daniel*, No. 01-1290 (filed Mar. 4, 2002) ("No. 01-1290 Pet."). That case, like both this one and *DaimlerChrysler AG* v. *Olson*, raises a certworthy issue. That case, *unlike* this one but like *DaimlerChrysler AG* v. *Olson*, raises a question – on which this Court has already once granted review – concerning the due process limits on state-court assertions of "specific" jurisdiction. See No. 01-1290 Pet. 2-3, 9-18; No. 01-929 Pet. 28-30. Specifically, both *McInnis* and *DaimlerChrysler AG* v. *Olson* raise the question of when a claim "arises out of, or relates to," the defendant's forum contacts. Thus, if the Court were to grant review in *DaimlerChrysler AG* v. *Olson*, it could address important and recurring issues of *both* general and specific jurisdiction in a single case. If it instead grants this case and holds No. 01-929, the Court will need to grant review as well in *McInnis* v. *Daniel* if it wishes to resolve the pervasive conflicts in the lower courts over the meaning of the "relatedness" prong.

4. Finally, DaimlerChrysler AG believes that this Court should give serious consideration to granting *all three* of these cases, if it decides not to grant review in *DaimlerChrysler AG*

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[7] We note, moreover, that petitioners are wrong to suggest that No. 01-929 does not involve any U.S. corporation. In *DaimlerChrysler AG* v. *Olson*, the Texas Court of Appeals attributed various activities of MBNA, an indirect U.S. subsidiary, to the German parent company. MBNA is incorporated in Delaware and has its principal place of business in New Jersey. The activities of MBNA that were attributed to Daimler-Benz AG included MBNA's sales of Mercedes-Benz vehicles to dealers in Texas. Those sales by a corporation "foreign" to the State exercising jurisdiction are no different from the energy sales involved in this case.

v. *Olson* alone. This Court has sometimes granted more than one case raising related issues when there is a substantial need for clarification in an area of law.[8] That is plainly true of the whole area of personal jurisdiction law and the "minimum contacts" test, which the Court has left to develop in the lower courts without guidance for the past decade.

Because all three of these cases present variations in the issues they raise and/or the facts they present, the Court should give serious consideration to granting review in all three. For example, the Alabama courts in *McInnis* relied in part on a novel "reprehensibility" exception not involved in this case or in *DaimlerChrysler AG* v. *Olson*. See No. 01-1290 Pet. 24-26. That supposed exception blurs the line between the distinct "minimum contacts" and "fair play and substantial justice" inquiries (see Reply Brief for Petitioners, *McInnis* v. *Daniel*, No. 01-1290, at 9-10 (filed April 16, 2002) ("No. 01-1290 Reply Br.")), just as the Texas Court of Appeals' decision, by relying on the "stream of commerce" theory, disregards the line between general and specific jurisdiction. See No. 01-929 Pet. 2, 12-14. And while *McInnis* (like No. 01-929) involves an attribution question, it is the attribution of a corporation's contacts to individual officers and shareholders of the corporation – not the attribution of one corporation's contacts to an

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[8] For next Term, the Court already has ordered argument in tandem of *Lockyer* v. *Andrade*, No. 01-1127, and *Ewing* v. *California*, No. 01-6978, both addressing a single State's "three strikes" law. In the current Term, the Court has granted certiorari to address various aspects of the *Apprendi* problem in *Ring* v. *Arizona*, No. 01-488, *United States* v. *Cotton*, No. 01-687, and *Harris* v. *United States*, No. 00-10666; and has granted certiorari to address various aspects of the interrelation of state sovereign immunity doctrine and the Telecommunications Act of 1996 in *Mathias* v. *WorldCom Technologies, Inc.*, No. 00-878, and *Verizon Maryland Inc.* v. *Public Service Commission*, No. 00-1531 and consolidated case. Examples from earlier Terms abound. *E.g.*, *Calcano-Martinez* v. *INS*, 533 U.S. 348 (2001), and *INS* v. *St. Cyr*, 533 U.S. 289 (2001); *Albertson's Inc.* v. *Kirkingburg*, 527 U.S. 555 (1999), *Murphy* v. *United Parcel Service, Inc.*, 527 U.S. 516 (1999), and *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999).

affiliated company. See No. 01-1290 Pet. 18-24 (describing conflict in lower courts on former issue); No. 01-1290 Reply Br. 8 ("piercing of the corporate veil * * * is not at issue in this case"). Because of these variations, the Court may well benefit from considering all three of the cases together.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, reply brief, and U.S. Chamber *amicus* brief in No. 01-929, this Court should either (1) grant review in No. 01-929 and hold this case; or (2) grant review in both cases as well as in *McInnis* v. *Daniel*, No. 01-1290, and set all three cases down for argument.

Respectfully submitted.

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No. 01-1200

IN THE
Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,
Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	10

TABLE OF AUTHORITIES

CASES — Page

DaimlerChrysler Aktiengesellschaft v. Olson, pet. for cert. pending, No. 01-929 (filed Dec. 19, 2001) 10

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) 7

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 9

Mc Innis v. Daniel, pet. for cert. pending, No. 01-1290 (filed Mar 4, 2002) 10

Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F. 3d 560 (2d Cir. 1996), *cert. denied*, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996) 3

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) 7

CONSTITUTIONAL PROVISION AND STATUTES

United States Constitution:

Fourteenth Amendment ..... *passim*

735 ILCS 5/2-209(a) (West 1998) 5

735 ILCS 5/2-209(b)(4) (West 1998) 7

735 ILCS 5/2-209(c) (West 1998) 7

REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

Respondents make no effort to show that the question of the permissible extent of general personal jurisdiction is unworthy of this Court's consideration. None of the respondents denies the importance of that issue. None of the respondents purports to identify a clear standard, operating in the lower courts, that governs assertions of general jurisdiction. Respondents Alderson et al. explicitly acknowledge that "there may be a conflict in the lower courts as to the precise scope of general jurisdiction" (Br. in Op. 26); respondent Danielson makes only a token effort to argue the contrary, ignoring most of the cases that are inconsistent with the decision below (Br. in Op. 24-25).

Instead, respondents focus their attention on this case alone. They make extensive factual claims and argue that the decision below is fact-bound and correct. They assert that we mischaracterize the holding of the court below when we say that the court allowed the exercise of general personal jurisdiction solely because the Hammond, Indiana power plant sold the bulk of its output to an Illinois firm.

All of these arguments are wrong. Our characterization of the ruling below was correct, and the case is not fact-bound. In addition—although the Court need not reach this issue—even if all of respondents' factual characterizations were true, the assertion of general jurisdiction in this case would still violate the Due Process Clause, and this case would still merit review by this Court.

1.a. The court below addressed the due process issue at Pet. App. 31a-35a. In that portion of its opinion, there are three passages that discuss the facts of this case. So that there can be no mistake about the basis of the court's ruling, we

will set forth these passages in their entirety. In the first passage, the court below said (*id.* at 32a):

> As we discussed in connection with the "doing business" analysis, [petitioners] have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. Because these defendants have directed their activities toward the Illinois marketplace and have derived economic benefit as a result of those activities, the fact that the sale of electricity to Commonwealth Edison is technically carried out in Indiana is of no consequence.

In the second passage—explaining why its assertion of general jurisdiction, in particular, was consistent with the Due Process Clause—the court said (Pet. App. 33a):

> We conclude, however, that [petitioners] have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them. We base our conclusion on many of the same factors supporting our conclusion that these defendants are "doing business" in Illinois. These defendants, through State Line Energy, agreed to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years. Therefore, their contacts with Illinois cannot be characterized as random, fortuitous, or attenuated.

In the third passage, the court was interpreting the Due Process Clause of the Illinois Constitution, rather than the United States Constitution, but its analysis sheds light on how it approached the due process issues (Pet. App. 34a):

> Through their operation and management of the Power Plant, [petitioners] have engaged in economic activities which have a substantial effect upon interests located in Illinois. The record demonstrates that Commonwealth Edison and the Illinois residents it serves are dependent upon the electricity the Power Plant generates. In light of

these defendants' substantial connections with Illinois, it is "fair, just, and reasonable" to require them to defend these actions in Illinois.

The *only* basis for jurisdiction mentioned in any of these passages is the sale of the bulk of the Indiana plant's output to an Illinois firm. There is no trace of "a multi-factor, record-intensive analysis" (Alderson Br. in Op. 21). At no point in this part of the opinion—the only part that discusses the due process issue—did the court below mention *any* of the other facts that respondents recount in such detail. If, for example, the court attached significance to the fact that certain contracts concerning the Indiana plant were executed in Illinois, or that the Indiana plant received some limited services from Illinois, it would have been simple enough for the court to say that those facts were relevant to its conclusion.

Similarly, if the court below believed—as other courts have said, in general jurisdiction cases—that all the facts must be taken together and that "[t]here is no talismanic significance to any one contact or set of contacts that a defendant may have with a forum state" (*Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F. 3d 560, 570-71 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996)), then the court below could have said that, as well, in its discussion of the due process issue. Instead, the court's opinion on the due process issue attached decisive significance to one circumstance: the sale of the bulk of the output of the Indiana plant to an Illinois firm. The question we present in the petition is therefore squarely raised by this case.

b. Respondents dwell on the sentence, in the second passage quoted above, that states (Pet. App. 33a): "We base our conclusion on many of the same factors supporting our conclusion that these defendants are 'doing business' in Illinois." Respondents Alderson et al. repeatedly quote two words from this sentence, with an ellipsis, to support a claim that the

decision below relied on "many . . . factors" (Br. in Op. i, 1, 9, 21). But this sentence does not say that the court is using a multi-factor analysis. It says something closer to the opposite: that not all of the facts mentioned in the "doing business" portion of the opinion are relevant to the due process issue. The fact that respondents must resort repeatedly to the creative use of an ellipsis demonstrates that they are unable to find support in the opinion for their assertion that the court below rested its due process holding on a multi-factor analysis.

The court below identified the "factors" on which it "base[d its] conclusion" about the Due Process Clause: the duration of the agreement to sell power from the Indiana plant to Commonwealth Edison, and the supposed exclusivity of that agreement. The opinion did not use qualifying phrases such as "for example," "among other things," or "in the particular circumstances of this case." Instead, after referring to the sale of power to Commonwealth Edison—and nothing else—the court concluded: "Therefore, [petitioners'] contacts with Illinois cannot be characterized as random, fortuitous, or attenuated." Pet. App. 33a. We do not see how the opinion can be read other than to say that those sales from the Indiana plant were sufficient to satisfy due process.

Beyond that, in the portion of the opinion in which the court concluded that petitioners were "doing business" in Illinois (and therefore were within the state's general jurisdiction statute), the overwhelmingly dominant theme—as respondent Danielson candidly admits (Br. in Op. 2)—is that petitioners were "doing business" in Illinois because the bulk of the output of the Indiana plant was committed to Commonwealth Edison. See Pet. App. 21a-26a. The court returned to this fact over and over in responding to petitioners' arguments. See, *e.g.*, Pet. App. 21a, 23a, 25a, 26a. There is no "record-intensive analysis": the court mentioned only a few other facts, such as the Indiana plant's location on the state

line, and it referred to those facts only glancingly. The opinion provides no basis for saying that the court would have reached a different conclusion—even on the statutory "doing business" issue, which is distinct from the due process issue—if those other facts were not present.

c. Respondents also make much of the lengthy introductory passage in the opinion below, where the court recounted evidence from the record in detail. Pet. App. 3a-12a. Respondents vehemently assert that the court would not have mentioned these facts unless it meant to rely on all of them to support its conclusion about general jurisdiction. See Alderson Br. in Op. 6, 10 n.5; Danielson Br. in Op. 6-7.

But there is a straightforward explanation for the court's recitation of this evidence: in addition to upholding the exercise of general jurisdiction, the court below considered (and rejected) respondents' effort to assert specific jurisdiction over petitioners. See Pet. App. 17a-20a. The Illinois specific jurisdiction statute refers to precisely the kinds of contacts that the court detailed in the opening portion of its opinion: "[t]he transaction of any business within this State" (735 ILCS 5/2-209(a)(1)); "[t]he ownership, use, or possession of any real estate situated in this State" (735 ILCS 5/2-209(a)(3)); and "[t]he making or performance of any contract or promise substantially connected with this State" (735 ILCS 5/2-209(a)(7)). Having stated these facts at the outset of its opinion, the court then reviewed them in its discussion of the specific jurisdiction statute (see Pet. App. 17a-20a). The court made no mention at all of these facts when it addressed the due process issue—showing that these facts were irrelevant to its holding on that issue.[1]

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[1] Respondents Alderson et al. (Br. in Op. 8-9) place great emphasis on the statement, made by the court below in discussing earlier Illinois decisions, to the effect that "substantial revenues from sales in Illinois are not enough to satisfy the 'doing business' standard in cases not involving

2. Even if one were to accept respondents' characterization of the decision below, that decision is still incorrect, and this case is still an unusually good vehicle for this Court's review. Respondents seek to paint a confusing picture of factual complexity, but in reality this case presents a simple, and not unusual, situation: an out-of-state plant that (i) is located near the forum state and (ii) sells the bulk of its output to a forum state firm. The alleged contacts that respondents recount in such detail—the use of a public road in the forum state, the occasional services from the forum state, the negotiations between Commonwealth Edison and petitioners, the communication between the customer and the plant—are the kind of contacts one would be likely to find in any case with these two features.

Even accepting respondents' characterization of the Illinois court's holding, therefore, this case presents a vehicle for reviewing the general jurisdiction issue that is unusually free of factual complexity. As we showed in the petition, many other courts have addressed (and disagreed about) when a state may assert general jurisdiction on the basis of either sales in the forum state or location near a state boundary. See Pet. 16-22. Importantly, in this case, unlike many general jurisdiction cases, there is no complicating issue about specific jurisdiction, because of the lower court's ruling against respondents on that question. For all of these reasons, this case would be an exceptionally good vehicle for

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product defects." Pet. App. 22a. This statement, again, refers explicitly to the Illinois statutory standard, not to the Due Process Clause. Moreover, when the court below explained what *would* satisfy the "doing business" standard, it again emphasized not the facts that respondents dwell on, but rather the sales from the Indiana plant to Commonwealth Edison: the court said that in this case "there exists activity specifically directed toward the Illinois market" and "this is not a situation where State Line Energy plausibly can claim as fortuitous the fact that the electricity * * * ultimately is consumed in Illinois." Pet. App. 23a.

the Court's consideration of general jurisdiction even if respondents' account of the decision were correct.[2]

The decision below is also plainly wrong on the merits, again even taking all of respondents' factual assertions at face value. As this Court stated in *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 416 (1984), the question in a general jurisdiction case is whether the defendant's contacts with the forum "constitute the kind of continuous and systematic business contacts the Court found to exist in *Perkins* [*v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)]." There is simply no comparison between petitioners here and the defendant in *Perkins*. In *Perkins* the defendant's business was conducted from an office in the forum; petitioners do not have any plant or any office of any kind in Illinois, as the court below explicitly conceded (Pet. App. 23a). In *Perkins* the defendant's highest-ranking officer was located in the forum and was running the firm from there; petitioners do not have any employees or any agents of any description in Illinois. In *Perkins* the defendant extensively used financial institutions in the forum; none of the petitioners has so much as a bank account in Illinois.[3]

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[2] In a puzzling passage, respondents Alderson et al. assert there is "an alternative and independent ground for the decision below * * * not challenged in the petition" (Br. in Op. 27). So far as we can determine, respondents' argument is that the petition challenges only the Illinois court's holding under the Illinois "doing business" statute, 735 ILCS 5/2-209(b)(4), and not its holding that jurisdiction could also be asserted under a different statute, 735 ILCS 5/2-209(c).

In fact, of course, we challenge neither of those holdings in this Court, because both concern matters of state law. Our contention is that the decision of the Illinois court is inconsistent with the Due Process Clause of the Fourteenth Amendment; for purposes of that contention, it makes no difference which state statute the Illinois courts relied on.

[3] Oddly, respondents Alderson et al. emphasize the fact that Commonwealth Edison maintained equipment at the Indiana plant (Br. in Op. 13, 19). But the fact that Commonwealth Edison had to place its

3.a. In many respects, the arguments advanced by respondents unwittingly demonstrate why this Court should grant review. For example, respondents follow the tendency displayed by many courts to conflate specific and general jurisdiction; respondents repeatedly lose sight of the fact that this case concerns the latter. Thus respondents refer repeatedly to choice of law provisions in certain contracts entered by petitioners, and they assert—using language from specific jurisdiction cases—that petitioners "availed themselves of Illinois law" (Alderson Br. in Op. 15) and "purposefully invoked the protections and benefits of [Illinois] law" (Danielson Br. in Op. 15 n.11). Respondents are treating this case as if it involved an assertion of specific jurisdiction over a claim arising out of those contracts. Of course it does not: the court below held that petitioners may be subject to suits in Illinois "neither arising out of nor related to the defendant[s'] contacts" with Illinois (Pet. App. 33a). This Court's decisions have never suggested that once a firm enters a contract that contains an Illinois choice of law provision, it can be sued in Illinois on claims having nothing to do with that contract.

Indeed, under the holding of the court below, petitioner Southern Company could be sued in Illinois on a claim that arose anywhere in the nation, or for that matter anywhere in the world, and that had nothing remotely to do with Illinois—even though, as respondents Alderson et al. recognize, Southern Company is "engaged in the nationwide production of electricity" (Br. in Op. 2), and it does only an infinitesimal percentage of its business at the Indiana plant (see Pet. 13-14). None of the respondents makes any effort to defend this aspect of the Illinois court's holding. More tellingly, how-

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equipment in Indiana, to take title to the electricity there, shows the *absence* of a contact with Illinois. Similarly, respondents try to make much of the fact that Commonwealth Edison maintained a telephone connection to the Indiana plant; but the fact that the plant's Illinois customer had to telephone into Indiana again demonstrates the extent to which operations were centered in Indiana, not Illinois.

ever, respondents, like the court below, do not even appear to appreciate how extraordinary a result this is—a sign of how endemic the confusion between specific and general jurisdiction has become, and of how much this Court's guidance is needed.

b. Similarly, respondents assert that it would be pointless for the Court to review this case because the Due Process Clause standard for personal jurisdiction inevitably requires an assessment of all the facts and precludes generalization. See Alderson Br. in Op. 23; Danielson Br. in Op. 10-11. In support of that claim, respondents cite (*ibid.*) passages from this Court's opinion in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). But in the six decades since *International Shoe*, the law governing specific jurisdiction has become much more well-defined, thanks to this Court's many specific jurisdiction decisions. See Pet. 3 (citing cases).

Those decisions demonstrate that the Due Process Clause inquiry in personal jurisdiction cases need not be wholly open-ended, as respondents assert. What is needed is guidance from this Court on the permissible scope of general jurisdiction, comparable to that which it has provided about specific jurisdiction. Indeed, as we said in the petition, because specific jurisdiction is so expansive, general jurisdiction can be quite precisely tailored—for example, to the traditional bases of a corporation's home state and principal place of business (as some lower courts have held, and as the classic academic treatment of personal jurisdiction urges), or to the functional equivalent of those traditional bases. See Pet. 23-24 (citing authorities).

c. Finally, the intensely factual nature of the Briefs in Opposition is itself, indirectly, further evidence of the need for review by this Court. The respondents emphasize that there is a 1500 page record in this case on the jurisdictional issue alone. Alderson Br. in Op. 1, 10; Danielson Br. in Op. 1. Such protracted litigation that does not even address

the merits is a sign of a dysfunctional jurisdictional regime; but it is the unavoidable consequence of the approach that many state and lower federal courts take to general jurisdiction. Any contact between the defendant and the forum—no matter how unrelated to the claim—is fair game; all such contacts can be added together, in just the way respondents attempt, to try to exceed some vaguely-specified level. This Court's intervention is needed to provide a more coherent and rational approach to this recurring and important issue.[4]

CONCLUSION

For these reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

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[4] As we explained in the amici curiae brief we filed in No. 01-929, *DaimlerChrysler Aktiengesellschaft v. Olson*, as well as in the petition in this case, we believe that this case provides an exceptionally good vehicle for the Court to consider the due process limits on general jurisdiction. We agree with petitioners in No. 01-929 and in No. 01-1290, *McInnis v. Daniel*, however, that those cases would provide the Court an additional perspective on this issue and on related issues of specific jurisdiction, and we agree with petitioners in those cases that the Court may well consider it appropriate to grant plenary review in all of these cases and consider them together.